



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**HUMAN RIGHTS AND INTERNAL SECURITY IN  
MALAYSIA: RHETORIC AND REALITY**

by

Noor Hishmuddian Rahim

March 2006

Thesis Co-Advisors:

Aurel Croissant  
Michael Malley

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RHETORIC AND REALITY**

Noor Hishmuddian Rahim  
Major, Malaysian Army  
MCJ, University of Malaya (Malaysia), 2004

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March 2006**

Author: Noor Hishmuddian Rahim

Approved by: Aurel Croissant  
Thesis Co-Advisor

Michael Malley  
Thesis Co-Advisor

Douglas Porch  
Chairman, Department of National Security Affairs

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## **ABSTRACT**

Since 1957, Malaysia has faced external and internal security threats. Over time, Malaysia has succeeded in solving the external threats but internal threats remained. The internal threats have come in many forms, including ethnic conflict, religious extremism and deviationism, and terrorism. Since the safety of the public lies in the hands of the government, measures have been taken to ensure the nation's stability and security, including restriction on civil and political liberties. This thesis examines human rights in Malaysia with a special focus on civil and political rights, particularly during the government of Prime Minister Mahathir. This thesis also examines the different rationalities used by the government in order to legitimize the restriction of human rights. The rationales that have been used by the government were: the anti-communist, racial harmony, the "Asian values" and developmentalism, and terrorism. This thesis analyzes the reasons behind changes in the rationales and the consequences for internal security. In addition, this thesis addresses the question of the potential impact on internal security if human rights were to be improved. In the final chapter, the thesis summarizes the findings and gives an outlook of the development of human rights in Malaysia.

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All opinions expressed and any errors of fact herein are solely my responsibility.



Figure 1. Map of Malaysia: (From: Malaysia: Achieving The Millennium Goals, January 2005, available at [http://www.epu.jpm.my/Newpercent20Folder/publication/MDG\\_advocacy\\_English.pdf](http://www.epu.jpm.my/Newpercent20Folder/publication/MDG_advocacy_English.pdf))

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## **I. INTRODUCTION**

You have to do the right thing. It may not be in your power; maybe not in your time, that there'll be any fruit. But that doesn't mean you stop doing the right thing. You may never know what results come from your action. But if you do nothing, there will be no result.<sup>1</sup>

Mahatma Gandhi

### **A. BACKGROUND**

In the name of humanity, countries in today's "civilized" world are being judged by the standard of human rights that they uphold. Respect for human rights is one of the key principles behind the effective functioning of a nation's constitution, law and government.<sup>2</sup> Many countries, especially in the West, are concerned about and emphasize human rights in their foreign and economic policies. These countries uphold the Universal Declaration of Human Rights (UDHR), adopted on December 10, 1948. The UDHR was followed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. A series of additional covenants<sup>3</sup> were later made and ratified by the members of the United Nations (UN). These collected statements, known as the International Bills of Rights, have become instruments for interpreting human rights as described in the UN Charter.

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<sup>1</sup> Mahatma Gandhi quoted in Aliran Homepage. Database on-line. Available at <http://www.aliran.com>; accessed 21 May 2005.

<sup>2</sup> Lt Col Rosli bin Mohd Yusof, "Human Rights and National Security in Malaysia," (Master's Thesis, Malaysia National University, 2004), 2.

<sup>3</sup> Apart from the ICCPR and ICESCR, the other conventions are the 1965 International Convention on the Elimination of Racial Discrimination (ICERD), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) and the 1989 Convention on the Rights of the Child (CRC).

The UDHR has two fundamental pillars: it declares that all human beings should have the freedom from fear and freedom from want.<sup>4</sup> Implicitly, the first pillar of the Declaration represents an ideal state where people would have the widest range of political rights: the right to a democratically-elected government, rule of law, freedom of expression and freedom from unlawful detention, prosecution and torture. One might say that this part of the Declaration has been in the spotlight for the last half of the past century, and has been the main focus of the 65 states that were its original signatories.<sup>5</sup>

The other pillar of the Declaration is the right to the basic necessities of food, shelter, health, education and employment. As developing countries seek to relieve themselves of the burdens of colonialism, occupation, war and starvation, economic rights and material progress have become equal in importance to political rights. For the vast majority of developing countries in Asia, Africa and Latin America, these are the rights that matter most.<sup>6</sup> Malaysia, for instance, inherited a democratic system of regular elections and universal suffrage from the British. Its success in addressing the communist threat and the race riots in 1969 made Malaysia, as a nation, free from fear. Since its inception, it has focused its energies on ridding its population from want and providing fair opportunities for all Malaysians.<sup>7</sup>

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<sup>4</sup> "Freedom from fear means a worldwide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against another neighbor anywhere in world. Meanwhile freedom from want means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants everywhere in world." See Franklin Delano Roosevelt, "The Four Freedoms" (Excerpts from an address to U.S. Congress). Available at <http://usinfo.state.gov/products/pubs/hrintro.fourfree.htm>; accessed 23 January 2006. See also Jack Donnelly, *International Human Rights* (Boulder: Westview Press, 1998), 23 – 25 and Jack Donnelly, "The Social Construction of International Human Rights," in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler, 71 – 102, (Cambridge: Cambridge University Press, 1999), 72.

<sup>5</sup> Dato' Seri Najib Razak, "Human Rights: Now and the Future," (Keynote Address, SUHAKAM Convention, Kuala Lumpur, 2003).

<sup>6</sup> Chandra Muzaffar, *Human Rights and the New World Order* (Penang: Vinlin Press Sdn Bhd, 1993), 13.

<sup>7</sup> Ibid.

In Malaysia today, despite the UDHR, various human rights issues have yet to be resolved and remain important concerns on the international agenda.<sup>8</sup> The nature of the political system and the conditions of its legitimacy, along with the social, cultural, religious, and ethnic make-up of Malaysian society, have caused continuous violations of human rights. Amnesty International reports that, “A pattern of violations – including significant restrictions on civil and political rights – including sporadic detention without trial of real or alleged political opponents has become institutionalized in Malaysia.”<sup>9</sup> Not only has the Malaysian government worked to undermine the principles of international scrutiny and universality, it has attempted also to suppress domestic human rights advocates.<sup>10</sup> And when the Malaysian government did take human rights initiatives (for example, establishing a National Human Rights Commission), such actions have more often than not been aimed at improving the government’s image rather than addressing the root causes of abuse.<sup>11</sup> Those nongovernmental organizations (NGOs) which are committed to human rights have pushed the government to match its rhetoric with realistic or responsible action.<sup>12</sup>

Malaysia is one of few states of the postcolonial developing world in which democracy was installed at the time of independence (1957). However, pressure from subsequent internal and external threats has compromised and eroded the democratic processes in Malaysia. Under colonial rule, a state of emergency was declared in response to the violent communist campaign. During this period, the

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<sup>8</sup> Yusof, 2.

<sup>9</sup> Amnesty International Country Report, “Malaysia: Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy,” September 1999, 1 – 92. Database on-line. Available at <http://www.amnestyusa.org/countries/Malaysia/document.doc>; accessed 12 June 2005.

<sup>10</sup> The Malaysian government saw the parties that advocate democracy and human rights as “anti-government” and as a “foreign government tool” to weaken the existing government.

<sup>11</sup> Geoffrey Robinson, “Human Rights in Southeast Asia: Rhetoric and Reality” in *Southeast Asia in the New World Order: The Political Economy of a Dynamic Region*, ed. David Wurfel and Bruce Burton (New York: St. Martin’s Press, 1996), 75.

<sup>12</sup> NGOs like HAKAM, Aliran and SUARAM have combined together to push the government to address human rights issues. See Robinson, 74.

British introduced the Internal Security Act (ISA), the Official Secrets Act (OSA) and the Sedition Act, under which “suspected communists” could be held without trial.<sup>13</sup>

After the violent communist campaign ended in 1960, Malaysia faced three immediate problems. The first was Indonesia's harsh opposition to the creation of a Federation of Malaysia.<sup>14</sup> The second was the Philippines's claim on Sabah.<sup>15</sup> The third problem was the incorporation of the overwhelmingly ethnic Chinese state of Singapore.<sup>16</sup> The Chinese in peninsular Malaya and the indigenous groups in Sarawak were less supportive of the formation of Malaysia. They commonly used terms like “equality,” “fairness” and “justice” when talking about their grievances against the federal government. Sarawak contributed more to the federal government than they received, which they still see as unfair today.<sup>17</sup> In 1965, the federal government finally declared an emergency in Sarawak and later disbanded the opposition-controlled state assembly.

Tensions between the ethnic Chinese and Malay populations, which culminated in race riots in May 1969, contributed to modifying Malaysia's earlier liberal orientation.<sup>18</sup> Following the 1969 riots, internal security laws were

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<sup>13</sup> Damien Kingsbury, *South-East Asia: A Political Profile* (Melbourne: Oxford University Press, 2001), 272.

<sup>14</sup> This confrontation, which began in 1963, was the greatest threat to Malaysia. Indonesian paratroopers disguised as local volunteers landed in Labis and attacked Malaysian military personnel. They also crossed the Kalimantan border into Sarawak and supported the communist movement in Sarawak. Officially, this confrontation ended in 1966. For further elaboration on this topic, see Tarling, N, *Nations and States in Southeast Asia* (Cambridge: Cambridge University Press, 1998), 115.

<sup>15</sup> Although the Philippines never actively threatened the existence of Malaysia, this claim was primarily diplomatic. The Philippines wanted Sabah to be returned to them on the grounds that Sabah belonged to the Sultanate of Sulu and by virtue of the inclusion of Sulu into the Philippines, Sabah also belongs to them. See Tarling, 115 – 116.

<sup>16</sup> Singapore's Chinese were uncomfortable with the new state that was politically dominated by ethnic Malays. They were also afraid that their economic wealth would move to Malaysia and they would get only a small portion, since a greater part of the population was in the peninsula of Malaysia. See Kingsbury, 275, and also Harold Crouch, *Government and Society in Malaysia* (Ithaca: Cornell University Press, 1996).

<sup>17</sup> Kingsbury, 276.

<sup>18</sup> Crouch, 24 – 27.

strengthened. Subsequently, the New Economy Policy was introduced by the government; it was aimed at addressing the Malay grievances about economic disparities.

In 1977, the federal government again declared an emergency, this time in Kelantan, because the opposition party controlled the state assembly and planned to declare an Islamic state. The aim of the proclamation was to halt the spirit of radical Islam conveyed by the Parti Islam SeMalaysia (PAS).

Prime Minister Tun Dr. Mahathir Mohamad stepped into the premier's office on July 16, 1981, and headed the Malaysian government until Oct 31, 2003--a period of 22 years. Malaysia was said to be moving towards authoritarianism under his regime, because Mahathir heavily suppressed civil and political rights to strengthen his political position and to preserve racial harmony.<sup>19</sup> In 1987, he gave his approval to the police for the arrest, under the ISA, of 119 dissidents. Among those arrested were ten members of parliament from the Democratic Action Party (DAP), which is the Chinese opposition party, along with eight members of the Malaysian Chinese Association (MCA), five members of Gerakan Rakyat Malaysia (GERAKAN) and three members of the United Malay National Organization (UMNO), the ruling party.<sup>20</sup> The mass arrest was called "Operation Lalang," or the "Weeding Operation,"<sup>21</sup> and was intended to constrain racial tensions. This operation also created a culture of fear among the population and also within Mahathir's own UMNO party.

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<sup>19</sup> For further elaboration of authoritarianism, see: Crouch, 107; Bridget Welsh, ed., *Reflections: The Mahathir Years* (Washington D.C.: John Hopkins University, 2004), 3; and Karla Schneider, "Rhetoric, Reality and Prospect for Reform: Democracy and Human Rights in Malaysia," (Master's Thesis, Ohio University, August 2002), 46.

<sup>20</sup> Kingsbury, 279.

<sup>21</sup> The arrests of 119 activists for allegedly promoting ethnic tensions, illustrates the extent to which the government uses the ISA to restrain the oppositions. See: Bridget Welsh, "Malaysia: Security Begins at Home" in *Asian Security Handbook: Terrorism and the New Security Environment*, ed. William M. Carpenter and David G. Wiencek, 3<sup>rd</sup> Edition (New York: M.E. Sharpe, 2005), 166 – 179, William Case, "Semi Democracy in Mahathir's Malaysia," 77 – 86 and In-Won Hwang, "Malaysia's "Presidential Premier": Explaining Mahathir's Dominance," 67 - 76 in Bridget Welsh, ed. *Reflections: The Mahathir Years*, (Washington D.C.: John Hopkins University, 2004).

The Supreme Court's 1987 declaration that UMNO was an illegal organization was a major setback for Mahathir and showed that while he increasingly dominated politics, some important elements remained outside of his control.<sup>22</sup> One of these elements was the judiciary. Thus, in 1988, Mahathir sacked the responsible judges on the grounds of misconduct. He also amended the Constitution to curtail the judiciary's power to check the executive. With this amendment, the judiciary lost its independence and came under executive control.

Mahathir was known as one of the most vocal supporters of the idea of "Asian values." He argued that human rights, as propounded in the West, are founded on individualism; they therefore have no relevance to Asian societies, which are based on the primacy of the community. He also suggested that "Asian values," in which community rights always prevail over individual rights, should be a model for Malaysia.<sup>23</sup> He argued that acknowledging civil and political rights would threaten internal security.

The Anwar Ibrahim case of 1998 was the watershed of human rights issues in Malaysia. Anwar Ibrahim was a former Deputy Prime Minister who was arrested and charged with corruption and inappropriate sexual behavior. Descriptions of his case were published both locally and internationally. The government also used the ISA to legitimize the arrests of Anwar's political associates--university students, opposition political party leaders, businessmen and others--who opposed Mahathir's heavy-handed actions against critics.

In addition, the Global War on Terrorism (GWOT) gave Mahathir's government a valid excuse to use the ISA and other emergency laws to justify more human rights abuses in the form of political repression, mistreatment and torture. Mahathir used emergency laws such as the ISA, the OSA, the PPPA and

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<sup>22</sup> Kingsbury, 280.

<sup>23</sup> For an elaborated discussion of "Asian values" see "'Asian values' and Democracy in Asia," Proceedings of a conference held on 28 March 1997 at Hamamatsu, Shizuoka, Japan. Available at [http://www.unu.edu/unupress/asian\\_values.htm](http://www.unu.edu/unupress/asian_values.htm); accessed 7 October 2005.

the Emergency (Public Order and Prevention of Crime) Ordinance to curb his political enemies as well as terrorism. He instilled a culture of fear among the entire population.

Faced with ongoing threats, the government of Malaysia has resorted to special legislation and constitutional amendments intended to increase its powers in dealing with crises and to further limit citizens' rights and freedom. Relevant legislation includes the ISA of 1960, which allows for detention without trial. The PPPA, the Sedition Act and the OSA cover sensitive issues. The Societies Act and the Universities and University Colleges Act grant power to the Registrar of Societies to limit the modes of action and expression by NGOs. The Emergency (Public Order and Prevention of Crime) Ordinance and the Police Act curtail certain individual freedoms.<sup>24</sup> Over time, these measures have led to violations of human rights in Malaysia that raise doubts among domestic and foreign observers (particularly during Mahathir's term in office) as to whether Malaysia has remained a democracy.

## **B. RESEARCH SCOPE**

First, this study examines the reluctance of Mahathir to improve civil and political rights in Malaysia. The creation of the Malaysian Commission on Human Rights (Suruhanjaya Hak Asasi Manusia, or SUHAKAM) in 1999 seemed intended to improve human rights in Malaysia. However, because the commissioners were appointed and paid by the government for two years, and because the commissioners' tenure will be renewed or terminated by His Majesty on the advice of the Prime Minister, there is doubt about the Commission's independence and neutrality.<sup>25</sup> Second, this study will demonstrate that the restriction of human rights produces an adversarial effect on internal security.

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<sup>24</sup> Saliha Hassan and Carolina Lopez, "Human Rights in Malaysia: Globalization, National Governance and Local Response" in Francis Loh Kok Wah and Joakim Ojendal, ed. *Southeast Asian Responses to Globalization: Restructuring Governance and Deepening Democracy* (NiAS Press, 2003), 116.

<sup>25</sup> Ibid., 126.

The literature pertaining to human rights and their relationship to national security in Malaysia is vast. Most academic writers agree that human rights, specifically civil and political liberties, have been limited in Malaysia. Mahathir's control over Malaysia produced the most significant deterioration of human rights since the nation's inception.

In 1999, Milne and Mauzy<sup>26</sup> described how civil and political rights were under constraint because of the government's 1969 emergency proclamation. After the proclamation, the executive was given broad powers to enact laws that suspended most constitutional rights. The only way to revoke the emergency proclamation would have been through a vote in the Parliament. But since the ruling party controlled a two-thirds parliamentary majority, revocation was very unlikely. In fact, Mahathir regularly used the ISA to curb freedom of speech and the rights of assembly and association in order to preserve his political position and strengthen UMNO.

Saravanamuthu,<sup>27</sup> Tommy<sup>28</sup> and Heufers<sup>29</sup> agree that Mahathir, during his premiership, suppressed civil and political liberties on the grounds of national security. According to Saravanamuthu, Mahathir's continuing use of emergency legislation such as ISA in a non-emergency environment had a negative impact on the state of human rights in Malaysia.<sup>30</sup> During his tenure in office, freedom of expression, freedom of speech, the freedoms of association and peaceful assembly, and the rights to fair trial and to counsel were restricted. In addition, the element of free and fair elections was absent, and participation in politics was limited.

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<sup>26</sup> R.S. Milne and Diane K. Mauzy, *Malaysian Politics under Mahathir* (New York and London: Routledge, 1999), 106.

<sup>27</sup> Johan Saravanamuthu, "Report on Human Rights in Malaysia: Regression or Progression", Aliran Monthly. Database on-line. Available from <http://aliran.com/hr/index.html>; accessed 6 June 2005.

<sup>28</sup> Tommy Thomas, "Human Rights in 21st Century Malaysia," *Insaf, the Journal of the Malaysian Bar*, XXX, No. 2, (June 2001), 91 – 106.

<sup>29</sup> Rainer Heufers, "The Politics of Democracy in Malaysia," *ASIEN*, (October 2002), 85, 39 – 60.

<sup>30</sup> Saravanamuthu, 2.

For the same reasons, Tommy states that overdependence on emergency legislation by the government undermined human rights. In fact, he argues that over reliance on the emergency legislation might even have caused government brutality.<sup>31</sup> He further explains that extreme dominance of the executive over the legislative and judiciary allowed Constitution articles unfavorable to the government to be amended without resistance. These amendments occurred because the weak opposition coalition did not have the opportunity to use the Parliament to check executive power.

Heufers supports Saravanamuthu's and Tommy's arguments. He further expands on the topic by noting that the government's control over the media,<sup>32</sup> legislative and judiciary infringes on human rights. This control created a culture of fear among the Malaysian people.<sup>33</sup>

Additionally, Lee argues that the GWOT gave Mahathir legitimacy to act against his political opponents, suspected terrorist links, militant group members and religious deviationist groups.<sup>34</sup> Mahathir used the ISA arbitrarily in the name of internal security. Lee suggests that a weak judicial system failed to safeguard individual liberty against the ISA and undermined human rights.

According to Thompson, the state of human rights in Malaysia has been very much affected by the antiterrorism campaign.<sup>35</sup> This campaign has actually been a bonus for authoritarianism in Malaysia, and Mahathir regarded the opposition politicians, who demanded greater democracy, as dangerous

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<sup>31</sup> Tommy, 93.

<sup>32</sup> In April 1994, Malaysia expelled a Filipino news correspondent based in Kuala Lumpur on the grounds that she had written an article deemed a threat to national security. Leah Palma Makabenta was given 48 hours to leave Malaysia after her work permit was cancelled on April 1. See "Malaysia expels correspondent for 'security reasons'," *Jakarta Post*, April 5, 1994.

<sup>33</sup> Heufers, 45.

<sup>34</sup> Therese Lee, "Malaysia and the Internal Security Act: The Insecurity of Human Rights after September 11," *Singapore Journal of Legal Studies*, 2002, 56 – 72.

<sup>35</sup> Mark R. Thompson, "Pacific Asia after 'Asian values': Authoritarian, democracy and good governance" *Third World Quarterly*, Vol. 25, No. 6, 2004, 1079 – 1095.

terrorists.<sup>36</sup> In the same vein, Ali notes that Mahathir arrested a dozen suspected militant Muslims, some of whom were linked with PAS, on the pretext that they were terrorists.<sup>37</sup>

In a recent publication, Welsh argues that the domestic environment are the Malaysian security priority. In another words, the government put its effort to address internal security threat.<sup>38</sup> She then specifies the four cornerstones of Malaysia's internal security priorities, namely (1) economic strength, (2) ethnic harmony, (3) protecting Malay hegemony, and (4) Islamic challenges from PAS. It is indeed true that since independence, Malaysia has consistently used the emergency laws to squash groups that criticize or oppose government policies. Although the use of these laws has generally violated constitutional rights, protecting the ruling party remained the first priority of internal security.<sup>39</sup>

On the other hand, human rights practices are believed to help strengthen national security, according to Christie and Roy.<sup>40</sup> This argument is based on at least three points.<sup>41</sup> First, maximizing the rights of citizens may increase their loyalty to the state. Thus, people are willing to make comparatively large scale sacrifices to defend the state when this becomes necessary.<sup>42</sup> Second, promoting and protecting human rights may improve a country's relative power (which is often the most common usage of the term "national security") by speeding up its economic development. The free flow of information and the rule

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<sup>36</sup> Thompson.

<sup>37</sup> Mushahid Ali, "Impact of 9-11 on Malaysia and Singapore – One Year Later," *Commentaries*, September 2002, IDSS, available at <http://www.ntu.edu.sg/idss/publications/commentaries2002.html>; accessed on 6 July 2005.

<sup>38</sup> Bridget Welsh, "Malaysia: Security Begins at Home," in William M. Carpenter and David G. Wiencek, ed. *Asian Security Handbook: Terrorism and the New Security Environment*, 3<sup>rd</sup> Edition (New York: M.E. Sharpe, 2005), 166 – 179.

<sup>39</sup> Ibid., 172.

<sup>40</sup> K. Christie and D. Roy, *The Politics of Human Rights in East Asia* (London: Pluto Press, 2001), 26.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

of law, which are consequences of expanded civil and political liberties, facilitate innovation, efficiency and entrepreneurship.<sup>43</sup> Finally, by promoting human rights abroad, a state may make itself more secure.

One might ask: How will this argument fit into this study? The answer can be found by looking at how the state responds to potential and real threats to domestic security, how the preventive laws were used and the rationale used by the state to legitimize actions against its citizens.

The gap in the literature is the lack of a comprehensive analysis of how the state of human rights affects internal security in Malaysia. Most studies focus either on the government's extensive use of emergency legislation to restrict rights, or on the relationship between democracy and human rights. Hence, to fill the gap, a study of the relationship between human rights and internal security is necessary. Since the scope of human rights issues is wide, this study focuses on civil and political rights in Malaysia. Several developments which undermined civil and political rights have occurred since independence in 1957. However, as previously mentioned, the period between 1981 and 2003 is the watershed of civil and political rights disputes in Malaysia. The government started to curb civil and political rights in 1981 on the grounds of preserving racial harmony. During Mahathir's premiership, these rights were limited for a variety of reasons, including racial harmony, nation building, anti-communism, Asian values, and recently the GWOT. Therefore, this study focuses on how the human rights situation developed under Mahathir as Prime Minister.

### **C. METHODOLOGY**

This thesis is a qualitative case study. Critical narrative analysis is conducted based on existing literature and information gathered from primary and secondary sources. An historical perspective is needed to examine how civil and political developed under Mahathir and how human rights issues have affected the nation's stability. To examine the evolution and deterioration of human rights in Malaysia, the state of human rights within the period from 1957

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<sup>43</sup> Christie and Roy.

to 2005 is described chronologically. This time period is divided into three phases: Phase One, from 1957 to 1980; Phase Two, from 1981 to 2003; and Phase Three, from 2004 to the present.

This study analyzes primary and secondary sources on the human rights situation over the three time phases. Because Mahathir was one of the longest-serving prime ministers, his policies, rules and regulations (which include policy, doctrine and procedures) are primary source information, and these sources are analyzed in this thesis. Much of this information is unavailable, however, due to the sensitivity or security classification of the information. Therefore, only the source reference is cited. Reports from various sources, such as Human Rights Reports, Human Rights Watch, NGO reports, and academic literature on human rights, national security and terrorism are annotated. Additional sources include observation and critical analyses based on questionnaires (administered either through the internet or by telephone) with individuals who are well-versed on the subject. These sources allow the analysis to include the perceptions and views of representatives from human rights organizations about both current and future challenges.

#### **D. ORGANIZATION OF THE STUDY**

Chapter II describes the political and economic situation in Malaysia from independence to the present (1957 – 2005). The purpose of this chapter is to give the reader important background information. To understand the framework of the problems, it is essential to analyze the connections between political and economic growth and human rights practices. The democratization issue is addressed first, followed by explanations of the New Economic Policy (NEP), the National Development Policy (NDP) and economic growth in Malaysia. In addition, the chapter explains the cleavages and tensions among the races in Malaysia and the consequent limitation of civil and political liberties.

Chapter III examines the human rights situation in Malaysia. This chapter is divided into three parts. The first part focuses on the human rights situation in Malaysia prior to the Mahathir era. The purpose of this section is to provide background. The second section examines the human rights situation under

Mahathir's rule as Prime Minister. This part elaborates how the human rights situation changed from the day he stepped into office in 1981 until he stepped down in 2003. At the beginning of his tenure, Mahathir was more liberal regarding human rights issues. But his attitude gradually changed, especially when his position was threatened. During his premiership, human rights were more suppressed. This chapter also examines the establishment of SUHAKAM. The analysis focuses on the roles, responsibilities and effectiveness of SUHAKAM. The third section examines the current human rights situation in Malaysia.

Chapter IV examines the rhetoric and reality of rationalizing human rights restrictions. This chapter discusses each of the rationales that the government claimed legitimized its actions in suppressing human rights. These rationales include anti-communism, racial harmony, Asian values, and terrorism. In the earlier stage of his premiership, Mahathir used anti-communism and racial harmony as excuses to suppress human rights in Malaysia. When the communist struggle ended in 1989, he used Asian values as an excuse. The September 11, 2001 incident fundamentally transformed the Malaysian political landscape to favor Mahathir and the ruling government. September 11 and the fear of militancy among Islamic extremists gave Mahathir a valid excuse to continue suppressing human rights in Malaysia. This chapter analyzes the reasons behind the changing of these rationales and their effects on internal stability.

Chapter V focuses on the impact of rhetoric and the reality of human rights on internal security. It addresses the factors that affect internal security when human rights are only rhetorical. This chapter also proposes benefits to improving human rights and how human rights improvements may affect internal security. This chapter argues that if human rights standards were improved, the government would become more transparent and effective. This chapter also examines the relationship between human rights and internal security. The purpose of this examination is to analyze how human rights affect internal

security. This chapter also assesses how far the civil and political liberties of citizens can be abridged by the government for the sake of protecting the state's internal security.

Finally, Chapter VI presents recommendations for addressing current human rights issues in Malaysia. These recommendations suggest how to improve the human rights situation while simultaneously promoting internal stability in the country.

## II. POLITICS AND SOCIETY IN MALAYSIA

The success and impact of the distribution of wealth through the New Economic Policy is evident from the fact that racial riots have not occurred during the economic crisis. Malaysians of all races live peacefully and clearly have a sense of patriotism.<sup>44</sup>

Prime Minister Dr. Mahathir Mohamad

The main purpose of this chapter is to provide the historical background necessary to understanding the connections among politics, economic growth and human rights issues in Malaysia. Topics discussed in this chapter include the pluralistic nature of Malaysian society and its impact on the political system, and the evolution from consociationalism to a semi-democratic regime. This chapter will also examine the country's development from a colonial economy to the economy of a newly industrializing country (NIC). Taking into account the two factors of political and economic development, this chapter explains the cleavages and tensions among the races in Malaysia and the subsequent limitations on civil and political liberties.

### A. MALAYSIA AS A PLURALISTIC SOCIETY

Malaysia is a federation of thirteen states and three federal territories directly administered by the federal government. Geographically, Malaysia is divided into two distinct areas by the South China Sea: West Malaysia, also known as Peninsular Malaysia, and East Malaysia, which consists of Sabah and Sarawak. The two states of Sabah and Sarawak occupy the northeast part of the island of Borneo.

The total Malaysian population, based on 2002 statistics, is approximately 24 million.<sup>45</sup> The majority is made up of Malays (51.9 percent) and the indigenous people known as "*Bumiputera*," which literally means "son of the soil" (10.7 percent). The remaining population consists of Chinese (24 percent),

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<sup>44</sup> Mahathir Mohamad, "Annual Budget of 1999," (Budget Speech, House of Representatives, Kuala Lumpur, 21 October 1998).

<sup>45</sup> Malaysia Department of Statistics, *Malaysia: Monthly Statistical Bulletin*, July 2002, (Putra Jaya, 2002).

Indians (7 percent), “others” (1.1 percent) and noncitizens (5.3 percent).<sup>46</sup> With its mixture of races, Malaysia exemplifies a multi-religious, multi-ethnic country.

The Chinese and Indians migrated to Malaysia in the nineteenth century. They were brought in by the British to work in the tin mines and on the rubber plantations. Over time, the Chinese, who were concentrated in towns, came to control business and commerce in Malaysia, while most Indians remained employed on the rubber and later the palm oil plantations. The Malay were divided into two groups: administrators (including the military, police and civil service), and peasants and fishermen in the rural areas. In this respect, the British successfully practiced “divide and rule” in Malaysia. The ethnic groups lived separately and engaged in different economic activities. Although the groups were segregated, ethnic peace and political stability prevailed. The secret of Malaysia's success in maintaining ethnic peace and political stability was that “Malaysia had a system of good governance that involved, beyond the trappings of parliament and elections, an independent judiciary, a reasonable tolerance of opposition, and a considerable, if not perfect, respect for the principles of rule of law.”<sup>47</sup>

The roots of plural society in Malaysia can be traced from the British colonial era. As defined by Furnivall, “a plural society is a society that comprises two or more elements or social orders which live side by side, yet without mingling in one political unit.”<sup>48</sup> Furnivall argues that in the Malaysian context, the plural society effectively served the contemporary economic and political interests of British colonialism in Malaya. Because of Malaya's multi-ethnicity, economic, political and social issues were closely related to racial diversity. Furthermore, ethnic diversity became controversial whenever issues arose

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<sup>46</sup> Malaysia Department of Statistics.

<sup>47</sup> Diane Mauzy, “Malaysia: Malay Political Hegemony and ‘Coercive Consociationalism,’” in *the Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts*, ed. John McGarry and Brendan O’Leary, 106 – 127 (London and New York: Routledge, 1993), 107.

<sup>48</sup> J.S. Furnivall, *Netherlands India: A Study of Plural Economy* (New York: Macmillan, 1944), 446.

involving ethnic rights, language, religion, poverty among minorities and nation-building. As a result, ethnic cleavages were found at almost all levels and aspects of Malaysian life. As Mauzy correctly points out,

These groups were divided by coinciding cleavages of races, language, religion, custom, area of residence and to a large extent, by type of occupation. Predictably, they lined up on the same opposing sides on every politically relevant issue.<sup>49</sup>

To support Mauzy's argument, one Malaysian scholar, Dr. Zakaria Haji Ahmad, notes that "every political issue tends to be transformed into a communal one."<sup>50</sup> Hence, "Malaysian pluralism has no doubt [been] deemed to be a source of tension and conflict in the society."<sup>51</sup>

There are two incidents that caused tensions between ethnic groups in Malaysia: the First Emergency (1948 – 1960), and the race riot on May 13, 1969.

The First Emergency was a consequence of the armed insurrection by communists (mainly Chinese), which threatened political and ethnic stabilities.<sup>52</sup> The communists' main goal was to cripple the government, create political instability and destabilize the economy through radicalization and mobilization of the Chinese communities and the laborers in the rubber and tin industries.<sup>53</sup> The Communist Party of Malaya (CPM) took advantage of the instability and tried to overthrow the government of Malaysia. The CPM mainly targeted the middle and lower classes in remote and rural areas. Most of the people who lived in these areas were Chinese and Malay. It was difficult to influence the Malay because of their strong religious beliefs, which contravened communist ideology. Moreover,

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<sup>49</sup> Mauzy, 107.

<sup>50</sup> Zakaria Haji Ahmad and Sharifah Munirah Al Attas, "Malaysia in an Uncertain Mode," in *Driven by Growth: Political Change in the Asia-Pacific Region*, Revised Edition, ed. James W. Morley (Armonk, New York: M.E Sharpe, 1999), 145.

<sup>51</sup> Abdul Rahman Embong, "The Culture and Practice of Pluralism in Postcolonial Malaysia," in *the Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore and Indonesia*, ed. Robert W. Hefner, 59 – 85 (Honolulu: University of Hawai'i Press, 2001), 60.

<sup>52</sup> Fancis Loh Kok Wah, "Developmentalism and the Limits of Democracy Discourse," in *Democracy in Malaysia: Discourses and Practices*, ed. Francis Loh Kok Wah and Khoo Boo Teik, 19 – 50 (Surrey: Curzon Press, 2002), 22.

<sup>53</sup> Major Daniel S. Chalis, "Counterinsurgency Success in Malaysia," *Military Review*, 56 – 69, (February 1987): 57 – 58.

during the time, politics was dominated by the Malay. In its propaganda, the CPM took advantage of the differences between the races, including, for example, the Malays' political dominance and the perception of rural Chinese and Indian people as “second class citizens.”<sup>54</sup> The CPM received support from the Peoples Republic of China and the Soviet Union. This support was provided through a third country, Indonesia, during the Sukarno period.

The British reacted quickly to the communist threat. Under the “Briggs Plan,”<sup>55</sup> the British cut off CPM influence by relocating squatters (mainly supporters and sympathizers of the CPM) from remote areas to well-organized villages. The plan was launched to resettle 500,000 villagers and squatters into new villages equipped with schools, clinics, safe water resources and extensive perimeter defenses. The British created the “Home Guard,” dominated by Chinese, to guard the new villages, further shrinking the support base of the CPM. The assimilation of the Chinese population into the Malay political mainstream increased the trust between the two races, and both groups combined to fight the communists.<sup>56</sup> The government actions later revealed some successes as support for the communists declined. Faced with strong resistance from the Malays and the Chinese, the communists subsequently moved their operations to southern Thailand, after which, in 1960, the First Emergency ended.

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<sup>54</sup> William F. Case, “Can the 'Halfway House' Stand? Semi-democracy and Elite Theory in Three Southeast Asian Countries,” *Comparative Politics*, Vol. 28, No. 4, 437 – 464 (July 1996): 450 and Cynthia H. Enloe, “The Issue Saliency of Military-Ethnic Connection: Some Thoughts on Malaysia,” *Comparative Politics*, Vol. 10, No. 2 (January 1978): 279.

<sup>55</sup> The “Briggs Plan” was initiated by Lt. Gen. Sir Harold Briggs who was the first director of operations in Malaysia. His plan had four objectives:

- (1) To dominate the populated areas and to build up a feeling of complete security.
- (2) To isolate the communists from their food and information supply organizations.
- (3) To destroy the communists by forcing them to attack on British ground.
- (4) To break up the communist organization within the populated areas.

His planning was later credited as a cornerstone of the British victory in Malaya.

<sup>56</sup> Chalis, 62.

The May 13, 1969 race riots also resulted from ethnic tensions between Malay and Chinese. The incident began with a campaign against unequal treatment of the Chinese and Indian minorities organized by the Democratic Action Party (DAP) and Gerakan Rakyat Malaysia (Gerakan). During the five-week election campaign, the ruling Alliance<sup>57</sup> elites failed to address frustration and antagonism that had developed over the previous few years among non-Malays. The non-Malays were angered by controversial issues like “Malay special rights, the privileged position the Malays had in regard to employment, the four to one preponderance Malays enjoyed in the senior rank of the civil service and the barely concealed efforts that were being made to counter Chinese hegemony in commerce and industry.”<sup>58</sup> Interracial friction seemed an inevitable result of racial insults which were embedded indiscriminately and irresponsibly by both the opposition parties and the Alliance.

Consequently, interracial friction created widespread tensions and violent partisan clashes which at times threatened to become communal conflicts. The May 10, 1969 election was the third general election since independence. Election day itself was orderly. In the election, the ruling Alliance party remained in power but suffered severe losses.<sup>59</sup> Out of 104 seats in the parliament, the Alliance party won 66, while opposition parties such as the DAP and Gerakan won 34 seats.<sup>60</sup> Three ministers failed to retain their seats. DAP and Gerakan supporters marched in Kuala Lumpur to celebrate their victory. The Malay regarded this action as a challenge to their political supremacy. And during the

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<sup>57</sup> The Alliance consisted of the United Malay National Organization (UMNO), the Malaya Chinese Association (MCA) and the Malaya Indian Congress (MIC). These political parties were established along ethnic lines. For example, UNMO is Malay party and MCA is Chinese party, while MIC is Indian party. When Malaysia was established in 1963, the word “Malaya,” which had been used by the MCA and MIC, was changed to “Malaysia.”

<sup>58</sup> Diane K. Mauzy, “Malaysia – Malay Political Hegemony and ‘Coercive Consociationalism’” in *The Politics of Ethnic Conflict Regulation*, ed. John McGarry and Brendan O’Leary, 106 – 127 (London and New York: Routledge, 1993), 122 – 123.

<sup>59</sup> Jerome R. Base, “Malaysia: Change or Continuity?” *Asian Survey*, Vol. 10, No. 2, A Survey of Asia in 1969: Part II. 152 - 160. (February 1970): 152.

<sup>60</sup> Both parties (DAP and Gerakan) were mainly composed of the Chinese.

celebration, some of the Chinese and Indian participants rudely taunted Malay bystanders, causing fears of more aggressive ethnic group attacks.<sup>61</sup>

In response, the Malay, mainly from UMNO, organized a procession that began at the Chief Minister's residence in Kampong Baru, a large Malay settlement in the predominantly Chinese capital. Tension was high when the news broke out that Malay people had been attacked by Chinese on their way to Kampong Baru and several road blocks had been built by the Chinese to hinder the Malay from reaching the Chief Minister's residence. Serious riots occurred only in Kuala Lumpur and Selangor; other parts of the country experienced little violence. The government declared a state of emergency and eventually suspended the parliament. A National Operative Council (NOC) was established and acted as caretaker of the nation. The May 13 Tragedy Report states, "Malay would-be participants [in the procession] . . . had been attacked . . . by Chinese groups . . . en route to Kampong Baru. It caused a violent anti-Chinese reaction and resulted in several deaths."<sup>62</sup> Overall, 196 people died and many shops and houses were destroyed.<sup>63</sup>

Since that time, the issue of pluralism has haunted Malaysian politicians, policy makers and intellectuals. Whenever a policy debate arose, the racial issue interfered. Crouch rightly notes that "the spectre of a renewed outbreak of racial conflict continued to haunt the leaders of the government."<sup>64</sup> In the May 13 Tragedy Report, an observer states:

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<sup>61</sup> Stephen Chee, "Malaysia and Singapore: The Political Economy of Multiracial Development," *Asian Survey*, Vol. 14, No. 2. A Survey of Asia in 1973: Part II, 183 - 199 (February 1974): 183 and Base, 153.

<sup>62</sup> The National Operation Council, *The May 13 Tragedy: A Report*, (Kuala Lumpur, 9 October 1969), 88.

<sup>63</sup> See Barbara Watson Andaya and Leonard Y. Andaya, *A History of Malaysia*, 2<sup>nd</sup> Edition, (Honolulu: University of Hawai'i Press, 2001) 298 and Donald K. Emmerson, "A Tale of Three Countries," *Journal of Democracy*, 10.4, 35 – 53 (1999): 41. Database on-line. Available at [http://muse.jhu.edu/journals/journal\\_of\\_democracy/v010/10.4emmerson.html](http://muse.jhu.edu/journals/journal_of_democracy/v010/10.4emmerson.html); accessed 11 June 2005.

<sup>64</sup> Harold Crouch, "The Military in Malaysia," in *The Military, the State and Development in Asia and the Pacific*, ed. Viberto Selochan, 121 – 137 (Boulder: Westview Press, 1991), 126 – 127.

The unwritten law regarding communal issues was violated by the both Alliance and Opposition parties when they indulged in open public and heated debate over such subjects. Malay and Chinese emotions were rubbed raw and came dangerously close to breaking point. Although the campaign went off without incident, there was a distinct feeling of tension as polling day approached.<sup>65</sup>

The effect of the May 13 race riots was to create an impression that sensitive issues should not be discussed publicly, even in the parliament. Such sensitive issues included “the power and status of the Malay rulers, Malay’s special privileges, citizenship, Malay as the national language and the status of Islam as the official religion.”<sup>66</sup> The rationales behind the avoidance of explicit discussion of sensitive issues are “to allow the smooth functioning of parliamentary democracy: and to redress the racial imbalance in certain sectors of the nation’s life and thereby promote national unity.”<sup>67</sup> In addition, a new sedition law was introduced, and with it, freedom of speech, assembly and press were curtailed.

## **B. MALAYSIA POLITICS: FROM CONSOCIATIONALISM TO SEMI-DEMOCRACY**

One of the major problems in a democracy is protecting the rights and interests of minorities. If political parties are built along racial lines or tend to champion certain racial groups’ interests, the probability of racial clashes is higher. The First Emergency and the 1969 race riots were caused by ethnic dissatisfaction. These incidents, and especially the race riots, significantly changed the Malaysian political landscape.

In the effort to gain independence, the political elites did not emphasize racial and ethnic differences. The political parties were formed along ethnic lines. Each party struggled for its community's agenda. For example, the Malaysia

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<sup>65</sup> The National Operation Council, 21.

<sup>66</sup> Andaya and Andaya, 324 and Gordon P. Means, *Malaysia Politics*, 2<sup>nd</sup> Edition, (London: Hodder and Stoughton, 1976), 403.

<sup>67</sup> Andaya and Andaya, 324.

Chinese Association (MCA) and the Malaysia Indian Association (MIC) promoted equal rights for all Malaysians. Those parties also wanted Chinese and Tamil to be official languages of Malaysia.

During the first election in 1955, however, three political parties--UMNO, MCA and MIC--joined to form the Alliance Party. The Alliance Party was based on mutual understanding, trust and compromise among the three party leaders. The MCA and MIC leaders agreed to acknowledge several points, such as Islam as an official religion, Malay as the national language, and special privileges and rights for the Malay as *Bumiputera* or indigenous people. In return, the non-Malays were awarded citizenship by *jus soli* (citizenship by birth) and were free to practice their own religions, languages, and cultures and to acquire wealth and property.<sup>68</sup> In essence, the non-Malays were given the concession of citizenship, while the Malays kept their special position for an indefinite period of time. With this "special package deal," the Alliance Party won 51 of 52 seats in the Legislative Council. This consociational approach made the British confident of the Alliance Party; they believed its approach might work. Two years later, the British gave independence to Malaysia. The UMNO, MCA and MIC subsequently shared power in a coalition government until 1969. Although the power was not equal, the consociational system worked until 1969.

The government-institutionalized consociational system with Malay hegemony coincides with the consociationalism concept developed by Arend Lijphart.<sup>69</sup> Lijphart, Musolf and Springer define consociationalism as "a process of relatively autonomous bargaining and compromise within a coalition of elite leadership representing the various communal groups."<sup>70</sup> This concept works "through the mechanism of group autonomy, proportional representation, politics of compromise and consensus, a coalition government and veto power on

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<sup>68</sup> Francis Loh Kok Wah, 23.

<sup>69</sup> Arend Lijphart, *Democracy in Plural Societies*, (New Haven: Yale University Press, 1977).

<sup>70</sup> Lloyd D. Musolf and J. Fred Springer, "Legislatures and Divided Societies: The Malaysian Parliament and Multi-Ethnicity," *Legislative Studies Quarterly*, Vol. 2, No. 2, 113 – 136 (May 1977): 113.

decisions vital to group interests.”<sup>71</sup> Each party has to tackle its own community's problems, protect its community from extremist elements and formulate communal demand within permitted parameters. It was hoped that racial harmony and balance would be preserved with this practice.

After the 1969 race riots, Malaysia's leaders realized that the consociational approach did not work for the country. With this recognition, the government made drastic reforms to the political sphere aimed at preserving racial harmony and political stability. These reforms included restrictions on the civil and political rights of citizens. Human rights were curbed because the restrictions were deemed necessary to end ethnic friction and political instability.

In 1970, Malaysia was said to have moved toward a semi-democracy. As defined by Diamond, Linz and Lipset, semi-democracy is a state where

. . . the effective power of the elected officials is so limited, or political party competition so restricted, or the freedom and fairness of elections so compromised that electoral outcomes, while competitive, still deviate significantly from popular preferences; and/or where civil and political liberties are so limited that some political orientations and interests are unable to organize and express themselves.<sup>72</sup>

For example, Malaysia permitted the emergence of opposition parties to form a coalition. Malaysia also permitted professionals and laborers to form professional associations and labor organizations. On the other hand, the government used the Societies Act to restrict the activities of the professional associations and labor organizations. Similarly, university students' activities were circumscribed by the University and University Colleges Act, which prohibited students from joining or demonstrating support for a political party.

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<sup>71</sup> Hamzah Ali, “The Politics of Meritocracy in Malaysia,” (Master's Thesis, Naval Postgraduate School, December 2003), 17 – 18. Available at Dudley Knox Bosun files at [http://library.nps.navy.mil/uhtbin/cgisirsi/Tue+Jan+17+19:23:24+PST+2006/SIRSI/0/518/0/03Dec\\_Ali.pdf/Content/1?new\\_gateway\\_db=HYPERION](http://library.nps.navy.mil/uhtbin/cgisirsi/Tue+Jan+17+19:23:24+PST+2006/SIRSI/0/518/0/03Dec_Ali.pdf/Content/1?new_gateway_db=HYPERION); accessed 12 July 2005.

<sup>72</sup> Larry Diamond, Juan J. Linz and Seymour Martin Lipset, *Democracy in Developing Countries: Asia*, Vol. 3 (Boulder: Lynne Rienner Publishers, 1988), xvii.

As specified in Part II of the Federal Constitution, Malaysia has conducted elections every five years; the last election was in March 2004. The election was carried out according to the procedures stipulated in the Election Act. However, the ruling party uses all government mechanisms (such as the media, the bureaucracies and development grants) to ensure that the opposition's parties do not have a fair chance to compete.<sup>73</sup> While opposition parties are free to contest the election, they will be denied a two-thirds majority in the parliament or in the state assembly by the strict rules and regulations imposed on the opposition parties. The government may shorten the campaign periods for the opposition. Their communications and funding activities may be curbed, and "some of their constituencies may be disenfranchised."<sup>74</sup> The opposition parties have neither the facilities nor the amenities to convey their manifestos or visions.

These controls do not prevent opposition parties from contesting elections, but they do contribute to a situation in which, as William Case notes, "though opposition parties can gain entry to Malaysia's parliament, they are prevented from winning the majorities necessary to control it."<sup>75</sup> In essence, there is imbalance and inequality between the ruling party and the opposition parties in the Malaysian election process. In support of this observation, Crouch comments in his book, *Malaysian Government: Authoritarian Repression and Democratic Responsiveness*, "the Malaysian electoral system . . . [has been] so heavily loaded in favor of the government that it is hard to imagine that [it] . . . could be defeated in an election."<sup>76</sup>

The late Tun Abdul Razak, then Prime Minister, commented on the need for a type of democracy which fulfills the Malaysian society's needs. He stated that:

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<sup>73</sup> William F. Case, 448.

<sup>74</sup> Ibid., 439.

<sup>75</sup> William F. Case, *Politics in Southeast Asia. Democracy or Less* (Richmond: Curzon Press, 2002), 120.

<sup>76</sup> Harold Crouch, *Malaysian Government: Authoritarian Repression and Democratic Responsiveness*, (Ithaca: Cornell University Press, forthcoming).

The Malaysian type of democracy is best suited to the needs of the country's unique multi racial society. The Malaysian concept of democracy subscribes also the need to balance individual interests against the general security of the State. The view we take is that democratic government is the best and most acceptable form of government. . . . We recognize that each nation must develop . . . its own chosen political and economic system and that the developing world has a special need of an articulated political system suitable to its own problem.<sup>77</sup>

The departure from consociationalism in the early 1970 to semi-democracy was a deliberate move by Malaysia's government. In fact, Mahathir had considered whether the Westminster model, which was adopted, was suitable in the Malaysian context. His argument:

Several years after independence, we were so happy with our newfound freedom that our leaders failed to hear the grievances or notice the undercurrent of racial imbalance in the country in political, economic and social affairs.<sup>78</sup>

### **C. NEW ECONOMIC POLICY AND ECONOMIC GROWTH: FROM COLONIAL ECONOMY TO NEWLY INDUSTRIAL COUNTRY**

Malaysia is among the third world countries that have experienced extraordinary economic and social changes during the last three decades.<sup>79</sup> It began with a series of development plans that enabled the government to check how closely implementation conformed to planning, thus making it easy to see what revisions were necessary for future plans. During the last three decades, the government has implemented a New Economy Policy (NEP), followed by the National Development Policy (NDP) and National Vision (NVP). Malaysia's development planning framework is summarized in Table 1.

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<sup>77</sup> Tun Haji Abdul Razak, cited in Zakaria Haji Ahmad, "Malaysia: Quasi-Democracy in a Divided Society," in *Democracy in Developing Countries: Asia*, Vol. 3, ed. Larry Diamond, Juan J. Linz and Seymour Martin Lipset, 347 – 382 (Boulder: Lynne Rienner Publishers, 1988), 365.

<sup>78</sup> Kanapathy and others, *The Mahathir Era: Contributions to National Economic Development*, (Petaling Jaya: International Investment Consultant, 1989), 91.

<sup>79</sup> Crouch, *Government and Society in Malaysia*, 236.

Table 1. Malaysia's Development Planning Framework (From: Malaysia: Achieving The Millennium Goals, January 2005, available at [http://www.epu.jpm.my/Newpercent20Folder/publication/MDG\\_advocacy\\_English.pdf](http://www.epu.jpm.my/Newpercent20Folder/publication/MDG_advocacy_English.pdf)).

1971 – 1990	1991 – 2000	2001 – 2010
<i>New Economy Policy (NEP)</i>	<i>National Development Policy (NDP)</i>	<i>National Vision Policy (NVP)</i>
Outline Perspective Plan 1	Outline Perspective Plan 2	Outline Perspective Plan 3
Second Malaysia Plan (1971 – 1975) to Fifth Malaysia Plan (1986 – 1990)	Sixth Malaysia Plan (1991 – 1995) and Seventh Malaysia Plan (1996 – 2000)	Eighth Malaysia Plan (2001 – 2005)

## 1. The Colonial Economy Era

The British occupation of Malaysia began in 1786 with Sir Francis Light's invasion of Penang Island. As time went on, the British gradually encroached inland. Their initial aim was to control the sea route from India to China through the Straits of Malacca.<sup>80</sup> Beginning in the mid-nineteenth century, the British exploited the raw resources (especially from the inland states) needed to feed the industrial countries of the West. In order to ship these commodities to the West, the British developed railways and ports, mostly on the west coast of Peninsular Malaysia.

During the British colonial era, tin and rubber were the main exports of Malaya. Initially, tin had been mined in small quantities and was owned by the Sultans (the Malay rulers) and the Malay chiefs. As a result of great world demand for tin, the influx of Chinese immigrants and the establishment of Straits Settlement, the Sultans and the Malay chiefs slowly lost their ownership of the tin mines to the British.<sup>81</sup> Meanwhile, rubber plantations were introduced by the Europeans in the early 1900s; these were totally controlled by European businessmen. With the evolution of the American automobile industry, the demand for rubber increased tremendously. By 1920, Malaya exported about 51

<sup>80</sup> Norman G. Owen, ed. *The Emergence of Modern Southeast Asia*, (Honolulu: University of Hawai'i Press, 2005), 139.

<sup>81</sup> Donald R. Snodgrass, *Inequality and Economic Development in Malaysia*, (Kuala Lumpur: Oxford University Press, 1980), 16.

<sup>81</sup> Ibid., 18.

percent of the world's total rubber supply.<sup>82</sup> During that time, "Malaya was the most successful exemplary of what has been called the colonial export economy."<sup>83</sup> In the colonial export economy, immigrants were exploited for the economic advantages of the colonial master. The Malays, on the other hand, continued with their daily routines and activities and their traditional style of rural life without interference from the government. The Malay people were involved in the agriculture sector, working as rice growers and peasants and the like. They were not actively involved in the tin mining and rubber plantations. In other words, the Malays were segregated from the British economic sectors. Although the economy had developed overall, there were three fundamental imbalances: in the sectoral economic structure, in regional development and in personal income distribution.

The world depression affected Malaya's economy. In 1932, when the world prices of rubber and tin declined sharply, the British government took several steps to diversify the economy. The British focused on the agriculture sector in order to stabilize the economy. Making the situation worse was the Japanese occupation in 1942, which created economic instability and general uncertainty. Tensions among the races rose due to economic devastation and the longstanding distrust between the Malay and the Chinese.

After World War II, the British came back to Malaya and faced an armed communist insurrection. In 1948, the CPM started their campaign to gain support from workers and laborers. The campaign coincided with its main objective--to disrupt the Malayan economy. The economy was "booming" due to the Korean War, which "generated large balance of payments surpluses in 1950 and 1951."<sup>84</sup> Because the Malayan economy at that time was in good condition and benefited all ethnic groups, the communists failed in their bid to attract worker groups to the insurrection.

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<sup>82</sup> Snodgrass. 18.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid., 21.

One could say that the economic situation during the colonial era was over reliance on two main natural resources, tin and rubber. There was not much export diversification, and income was very much dependent on European demand for these two commodities.

The west coast of Peninsular Malaysia was better developed than the east coast. Trade, commerce and the development of infrastructure was concentrated on the west coast; this created disparity in regional development.<sup>85</sup>

The focus given to the tin and rubber export sector resulted a great influx of Chinese and Indian immigrant labor. The Chinese later established themselves as traders and concentrated in the urban areas, while the Malay maintained their rural lifestyles as rice growers and peasants. The Indians worked as laborers on the rubber plantations and lived in rural areas with poor prospects.<sup>86</sup>

Compared to the Chinese and Indians, poor education, unemployment and rural living led to more widespread poverty among the Malay. There was little cooperation and interaction among the races. The government maintained a *laissez-faire* ("leave it alone") policy on ethnic issues and played less and less of a role in stabilizing the economic disparities between the Malays and the non-Malays.<sup>87</sup>

## **2. Economic Growth and Transformation from 1957 to 1969**

Between 1957 and 1969, Malaysia continued to earn its income mainly from tin and rubber exports. The average annual Gross Domestic Product (GDP) growth rate was 6.4 percent.<sup>88</sup> To enhance the welfare of the Malay and to spur economic growth, the government considered diversifying its exports from tin and rubber to palm oil and cocoa. At the same time, the government actively

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<sup>85</sup> Owen, 142 – 143.

<sup>86</sup> Ibid., 145.

<sup>87</sup> Wolfgang Kasper, "Malaysia: A Study in Successful Economic Development," *Foreign Affairs Studies* (1974), 47.

<sup>88</sup> Edmond Terrence Gomez and Jomo K. Sundaram, "Malaysia" in *Democracy, Governance, and Economic Performance: East and Southeast Asia*, ed. Ian Marsh, Jean Blondel and Takashi Inoguchi, 230-260. (Tokyo: United Nations Press, 1999), 246.

promoted industrialization and started to attract foreign companies to invest in Malaysia. In 1957, the government introduced the first industrial scheme, the Pioneer Industries Scheme (PIS).<sup>89</sup> This scheme provided member companies with favorable tax treatments and incentives. Additionally, through this scheme the government imposed specific employment policies, such as employment quotas, to protect the Malays' job security. Quotas allowed companies to receive PIS status.<sup>90</sup> In other words, the government made employment quotas a precondition for a company to receive PIS recognition. However, this scheme was not effective in reducing the unemployment and poverty problems.<sup>91</sup>

The government subsequently doubled its effort to promote import-substituting industries (ISI).<sup>92</sup> The ISI was used to attract foreign capital investment to stimulate the Malaysian economy. It reflected efforts to diversify the economy by moving from agriculture to industry. The foreign companies established subsidiaries for “assembling, finishing and packaging goods produced with imported materials.”<sup>93</sup> The government’s policies resulted in the growth of the GDP from 9 percent in 1960 to 13 percent in 1970 in the ISI manufacturing sector. Similarly, manufacturing employment grew from 6.4 percent of total employment in 1957 to 11.4 percent in 1970. Despite the ISI manufacturing sector’s growth, however, the ISI scheme did not significantly reduce unemployment and poverty problems in Malaysia. In fact, the ISI industries had a weak link to the domestic economy. This weak link contributed

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<sup>89</sup> Ilcheong Yi, “The National Patterns of Unemployment Policies in Two Asian Countries: Malaysia and South Korea,” *Working Paper 15 – 2003*, (September, 2003): 14. Database on-line. Available from Stein Rokkan Centre for Social Studies, Bergen University Research Foundation, <http://www.ubu.ib/noel/pub/irokkan/NN15.03.pdf>; accessed 13 November 2005.

<sup>90</sup> Ibid., 14.

<sup>91</sup> According to Ilcheong Yi, there are two reasons why this scheme was not effective. First, there was too many Malay migrants from rural areas to urban areas. Thus, the new jobs created were not sufficient for those migrants. Second, there was an informal and systematic barrier against the Malay’s entry into Chinese or Indian-owned firms. For further details, see Ilcheong Yi, 14.

<sup>92</sup> Gomez and Sundaram, *Malaysia*, 246 and Ilcheong Yi, 14.

<sup>93</sup> Gomez and Sundaram, *Malaysia*, 246.

to the “domestic market saturation” and the manufacturing sector's contribution to GDP stagnation (around 9 percent in 1960 and 1964).<sup>94</sup>

Because of economic stagnation and higher unemployment rates, income inequalities increased among the ethnic Malay. Consequently, poverty remained widespread. In 1967, during an interview with the New Zealand Broadcasting Corporation, Deputy Prime Minister, Razak acknowledged the imbalance developing in Malaysian society. He said:

It is true at the moment that political power is in the hands of the Malays and economic power in the hands of the Chinese. That is why we must try and balance things out. That is why we are doing our best to try and give the Malays a little bit of share in the economic life to enable them to feel safe in the country. After all they were the original settlers.<sup>95</sup>

These economic problems resulted in the reduction of support to the Alliance party in the 1969 general election and eventually led to the 1969 race riots.<sup>96</sup>

### **3. New Economic Policy (1970 – 1990)**

A major cause of the race riots was “economic disparities between the racial groups in the country.”<sup>97</sup> To redress this underlying problem, the government in 1970 introduced a 20 year plan, the New Economic Policy (NEP). The plan began with three major objectives: to eradicate poverty irrespective of race or ethnicity, to restructure Malaysian society to correct economic imbalances by removing racial identification with economic function, and to maintain a growing economy. In addition, the NEP was to promote equity in conjunction with national unity among the races. The Malaysian government

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<sup>94</sup> World Bank, 1983.

<sup>95</sup> R. K. Vasil, *Politics in a Plural Society: A Study of Non-Communal Political Parties in West Malaysia*, (Kuala Lumpur: Oxford University Press, 1971), 5.

<sup>96</sup> Stephen Chee, “Malaysia and Singapore: The Political and Economy in Multiracial Development,” *Asian Survey*, Vol. 14, No. 2, A Survey of Asia in 1973: Part II (February 1974): 183.

<sup>97</sup> William Case, 450.

realized that national unity is the prerequisite for continuing economic progress and the NEP planned to narrow the economic gap between the Malays and non-Malays to reduce ethnic prejudices.

In 1970, the majority of the population lived in rural areas. Of the total population, 85.1 percent of Malays lived in rural areas, along with 65.3 percent of Indians and 52.6 percent of Chinese. These figures clearly show that the Malays were mostly isolated from modernization.<sup>98</sup>

Table 2. Division of Races by Percentage in 1970. (From: F. R Von Der Mehden, "Communalism, Industrial Policy and Income Distribution in Malaysia," *Asian Survey*, Vol. 15, No. 3, 247 – 261 (March 1975): 248)

<b>Race</b>	<b>Urban</b>	<b>Rural</b>
Malay	14.9	85.1
Chinese	47.4	52.6
Indian	34.7	65.3
Others	40.8	59.2
Total	28.7	71.3

Implemented in 1971, the NEP was divided into five-year periods known as the Second through Fifth Malaysia Plans.<sup>99</sup> To control these five-year plans, the government implemented the Outline Perspective Plan (OPP). Under the OPP, the government drafted the expectation of the plan over 20 years. Emphasis was on the following goals: (1) improving the living conditions in rural areas (dominated by Malays), (2) making education accessible to the lower classes, (3) providing more skilled job opportunities, and (4) reducing the income gap between the ethnic groups.<sup>100</sup> To achieve these goals, the government formulated a 30:40:30 formulas. By 1990, in all industries and commercial activities set up by the government, 30 percent of the share is for the Malays, 40 percent for other races, and the remaining 30 percent for international

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<sup>98</sup> Fred. R von der Mehden, "Communalism, Industrial Policy and Income Distribution in Malaysia," *Asian Survey*, Vol. 15, No. 3, 247 – 261, (March 1975):248.

<sup>99</sup> Karla Schneider, "Rhetoric, Reality and Prospect for Reform: Democracy and Human Rights in Malaysia," (Master's Thesis, Ohio State University, 2002), 25.

<sup>100</sup> Ibid.

investors.<sup>101</sup> The policymakers established long term targets for Malay ownership of share capital in limited companies and for the proportion of Malays employed in modern sectors (manufacturing, mining, commerce, industry and transportation), enrolled in institutions of higher learning and installed in managerial positions.

Between 1970 and 1990, the NEP succeeded in several respects. First, there has been no ethnic unrest in Malaysia since the NEP was implemented. The various ethnic groups have lived in harmony and the socioeconomic condition for all the races has improved.

Second, during the NEP period, all ethnic groups experienced economic growth. Malaysia experienced an average 3.75 percent per year growth in per capita income from 1970 to 1990; this benefited all races. For instance, the Malay experienced a 5.97 percent per capita increase, the Chinese, a 3.46 percent increase and the Indians, a 1.35 percent increase in per capita income.

Third, the NEP reduced the poverty rate from 49.3 percent in 1970 to 16.5 percent in 1990.<sup>102</sup> Gomez and Jomo correctly point out that in the *Bumiputera* communities, poverty was reduced from 64.8 percent in 1970 to 20.8 percent in 1990.<sup>103</sup> This result is a vital inspiration for the government to continue with its policy goal of completely eradicating poverty.

Fourth, Malay ownership of private sector increased. At the end of 1990, Malay ownership had grown from 2.4 percent in 1980 to 19.3 percent.<sup>104</sup> One might say that the NEP succeeded in creating a new class of *Bumiputera* entrepreneurs and businessmen.<sup>105</sup>

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<sup>101</sup> James V. Jesudason, *Ethnicity and the Economy: The State, Chinese Business and Multinationals in Malaysia* (Singapore: Oxford University Press, 1989), 159.

<sup>102</sup> Economic Planning Unit, Database on-line. Available from <http://www.epu.jpm.my>; accessed 11 January 2006.

<sup>103</sup> Edmund Terence Gomez and Jomo K. Sundaram, *Malaysia's Political Economy: Politics, Patronage, and Profits* (Singapore: Cambridge University Press, 1999), 167.

<sup>104</sup> Seventh Malaysia Economy Plan, Database on-line. Available from <http://www.smpke.jpm.my/rancangan.htm>; accessed 11 January 2006.

<sup>105</sup> Schneider, 27.

Finally, the level of education of the Malay population improved. To achieve this, Malays were given scholarships and preferences to enter universities and colleges. Some of them were excellent at their studies and achieved good results. Rural Malays also were able to go to university, locally or abroad. The former Finance Minister, Daim Zainuddin, pointed out that “education was our best investment. Education remains the key factor in any attempt to restructure society.”<sup>106</sup>

#### **4. New Development Policy (1991-2000)**

In 1991, having examined the successes and shortfalls of the First Outline Perspective Plan and the report of the National Economic Consultative Council, Mahathir's government introduced the New Development Policy (NDP) to replace the NEP. With this new policy, the government aimed at an average growth rate of 7 percent for the years 1991 through 2000.

The objective of NDP was to attain balanced development to create a more united and just society. The NDP was based on the NEP objectives of eradicating poverty and restructuring society and continued the strategy of growth with equity. It encompassed, among other points, the need to strike an optimum balance between growth and equity, to ensure balanced development of major sectors to insure responsiveness, and to emphasize science, technology and human resources for the entire population as a prerequisite for meeting the challenges of an industrial society.<sup>107</sup>

To achieve these objectives, three working plans were developed: the Sixth Malaysia Plan (1991 – 1995), the Second Outline Plan (OPP2), and Vision 2020. These three working plans proved to be a turning point in Malaysia's economic development during the recession of the mid-1980s. Unlike the NEP, which attracted the *Bumiputera* to first enter into business and commerce, the

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<sup>106</sup> Leslie Lopez, “From Social Engineering to Growth,” *Business Times* (Singapore), 1 September 1993. Database on-line. Available at [http://web.lexis-nexis.com/universe/document?\\_m=c4f507bb5d0c0bb8cd2d0647a4d7045e&\\_docnum=1&wchp=dGLbVtb-zSkVb&\\_md5=dbd287eea248a96669e6cd6a6dc965c7](http://web.lexis-nexis.com/universe/document?_m=c4f507bb5d0c0bb8cd2d0647a4d7045e&_docnum=1&wchp=dGLbVtb-zSkVb&_md5=dbd287eea248a96669e6cd6a6dc965c7); accessed 10 January 2006.

<sup>107</sup> Malaysia Economic Planning Unit, Prime Minister Department, “Malaysia: 30 Years of Poverty Reduction, Growth and Racial Harmony,” March 24, 2004, <http://www.epu.jpm.my/Newpercent20Folder/drpercent20Fadli.pdf>; accessed 11 January 2006.

NDP intended to retain and educate them in commercial enterprises. To increase meaningful participation of the *Bumiputera* in the modern economy, the *Bumiputera* Commercial and Industrial Community (BCIC) was created. Poverty decreased to 7.5 percent in 1999, although the *Bumiputera* equity decreased to 18.9 percent in 2000.<sup>108</sup> The focus of NDP's objectives and plans shifted from redistribution to growth.

Another change to the NDP involved a shift from nationalization of business and industry to privatization. This shift occurred because of the national corporations' poor performance.<sup>109</sup> According to Sundaram, "the privatization concept was to reduce government responsibility to provide financial and administrative support to industries, promoting competition and entrepreneurship, reducing the size of the public sectors that had become prone to monopolies and political polarization, and introducing the *Bumiputera* business to private enterprise."<sup>110</sup> Hence, the private sectors remained the growth engine in the 1990s, with the public sector playing a supportive and complementary role. The successful implementation of privatization depends on incorporating private sector participation and the idea that the fate of individual private industries should be determined by market forces. Economic well being would, of course, bring greater prosperity to the population; together with its aim of national unity, strengthen the state and increase internal stability.

## **5. National Vision Policy (2001 – 2010)**

Vision 2020 was formulated by Mahathir as Prime Minister. This personal vision has been accepted by the population as a national vision of what Malaysia should look like in the year 2020. It also provides the challenge that will have to

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<sup>108</sup> Dr. Wan Abdul Aziz bin Wan Mohamad, *Peranan Kerajaan Dalam Dasar Pembangunan Negara*, Kertas Kerja, Seminar Indeks-Indeks Pembangunan Dari Perspektif Islam, 28 – 29 Ogos 2004. Database on-line. Available at <http://www.epu.jpm.my/seminar%20indeks%20pembangunan%20dr%20perspektif%20islam%2028-29%20agos%2004.pdf>; accessed 11 January 2006.

<sup>109</sup> Gomez, 1997, 78.

<sup>110</sup> Jomo K. Sundaram, *U-Turn? Malaysia Economic Development after 1990* (Kuala Lumpur: Vinlin Press Sdn Bhd, 1990), 77.

be overcome to make Vision 2020 a reality. The vision sets new and higher objectives as national aspirations. It changes “the way Malaysians see themselves and the direction of their shared destiny.”<sup>111</sup>

The main goal of Vision 2020 is to increase Malaysia's productivity and competitiveness. In the last 30 years, the Malaysian economy has transformed from primary to industrial production. However, there has been very little focus on research and development (R & D). With the Vision, the Malaysian economy has been opened to foreign investors who, together with their technology, are encouraged to invest in electronics production supported by “the local workforce, good infrastructure, good industrial incentives, conduciveness to business environment and politically stability.”<sup>112</sup> This mutual support will enable Malaysia to enjoy rapid economic growth. Local companies will remain profitable because they will deliver products and services that consumer's desire and demand.<sup>113</sup> As attention is focused on R & D and technology, the government intends to expand its manufacturing and services sectors. Thus Malaysia will become one of the newly industrializing countries (NIC) like Japan and South Korea. Foreign investors are encouraged to invest in Malaysia's “export-orientated industries” and “public sector's privatization.”

In addition, Vision 2020 calls for total development. Hence, it requires that the government accept it as a public policy. The government has highlighted the Vision in its report:

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<sup>111</sup> Datuk Dr. Victor Wee, “*Vision 2020 and Enhancing Competitiveness*.” Paper presented during the Leadership and Management Course (JUSA) Series 28 No. 2/2003, INTAN, Bukit Kiara on 11 July 2003. Database on-line. Available at <http://www.epu.jpm.my/New%20Folder/Vision%20Competitiveness.pdf>; accessed 11 January 2006.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

By the year 2020, Malaysia can be united nation, with a confident Malaysian society, infused by strong moral and ethical values . . . a society that is democratic, liberal, tolerant, and caring, economically just and equitable, progressive and prosperous and in full possession of an economy that is competitive, dynamic, robust and resilient.<sup>114</sup>

It is worth noting that Vision 2020 is similar to the NEP and the NDP in its core components. However, it provides better perspectives on the strategies for achieving its objectives.

#### **D. CONCLUSION**

The integration of the Malay, the Chinese and the Indians into the nation-state of Malaysia has made it a plural society. This pluralism has always been a source of ethnic tensions and political instabilities, as evidenced by the First Emergency and the 1969 race riots. In fact, the government reaction to the race riots significantly changed the Malaysian political landscape from consociationalism to semi-democracy. As a semi-democratic nation, Malaysia practices regular elections but at the same time restricts civil and political liberties. It can be said that the race riots in 1969 were the turning point in the development of human rights in Malaysia.

During the colonial era, Malaya inherited a one-sided economy, huge regional disparities, and the separation of economical and political power. Immigrants were exploited for the benefit of the colonial masters. Although the economy was in a good condition, economic imbalance, poverty and isolation from modernization existed among the ethnic groups in Malaya until independence in 1957. After independence, the main focus was on achieving national unity and territorial integrity. The economic policy during that time was based on the *laissez-faire*. There were few efforts to close economic gaps between the Malays and the non-Malays. Between 1957 and 1969, the government diversified the rubber and tin export economy to include cocoa and

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<sup>114</sup> Government of Malaysia, *Malaysia: The Way Forward (Vision 2020)*, (Kuala Lumpur: National Printing Department, 1991), 5.

palm oil. At the same time, the government promoted schemes for industrialization. The PSI and later the ISI aimed to transform exports from agriculture to industrial products.

Learning from the 1969 race riots, the government introduced the NEP. This 20 year plan succeeded in reducing poverty among the ethnic groups and guided Malaysia to rapid economic growth. When the NEP expired in 1990, the government introduced the NDP. This policy was aimed at balanced development to establish a more united and just society. The NDP was also intended to strike an optimum balance between economic growth and equity goals. Between 1991 and 2000, Malaysia achieved the unprecedented average economic growth rate of 8.9 percent. This has led to public support for the government to continue with its development policy.

The NVP has driven Malaysia to the NIC. Under the NIC, the manufacturing and services sectors are expanded. Malaysia also emphasizes science and technology, R & D, and education and training, so that skilled human resources from local companies will be ready to compete in the market and meet the needs of foreign investors. All these development policies are aimed at national unity. Mahathir, in particular, wanted all races to be fully united and to contribute to the development of the country. The bitter memories of the 1969 race riots were a good lesson for Malaysians, demonstrating that the government will take measures to preserve racial harmony and political stability even though those measures may restrict its citizen rights.

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### **III. HUMAN RIGHTS IN MALAYSIA BEFORE, DURING AND AFTER MAHATHIR'S GOVERNMENT**

Human rights are the foundation of human existence and coexistence. Human rights are universal, indivisible and independent. Human rights are what make us human. They are the principles by which we create the sacred home for human dignity.<sup>115</sup>

Kofi Annan

This chapter examines the human rights situation in Malaysia. Mahathir argued that restrictions on human rights were necessary to maintain internal security. There is an ongoing argument between the state and human rights activists in which the former argues that the economy and social rights should take priority over civil and political rights, while the latter argue that human rights should be universal and liberal according to the UDHR. Such conflicting views make the human rights situation in Malaysia interesting to analyze. It is worthwhile to examine the situation in Malaysia before, during and after the period of Mahathir's administration. Accordingly, this chapter considers human rights divided into three periods: prior to Mahathir's rule (1957–1981), during Mahathir's rule (1981–2003), and after Mahathir's rule (2004 to present).

#### **A. HUMAN RIGHTS**

In general, human rights are grouped into four categories: civil, political, social and economic rights. The main focus of this chapter is on the first two categories, civil and political rights. The table below illustrates the internationally recognized categorization of civil and political rights.

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<sup>115</sup> Kofi Annan, cited in Yusof, 31.

Table 3. Internationally Recognized Civil and Political Rights (From: Jack Donnelly, *International Human Rights*, 2nd ed. (Oxford: Westview Press, 1998), 6).

Civil Rights	Political Rights
Self-determination	Rights to vote
Access to legal remedies for rights violations	Political participation
Equality of rights without discrimination	Rights to fair and free elections
Protection from arbitrary arrest and detention	Rights to compete for public office
Freedom of opinion, expression and the press	Hearing before an independent and impartial judiciary
Freedom of assembly and association	Free trade unions
Freedom of thought, conscience, and religion	
Liberty and security of person	
Protection against ex post facto laws	
Freedom of movement and residence	

As noted above, the UDHR, because it lays down the basic institutional structure for the protection of human rights, stands as both a foundation and a symbol of great importance.<sup>116</sup> Since its promulgation in 1948, the UDHR has been used as a model for many subsequent human rights charters. The UDHR was originally derived from the English Magna Carta of 1215, the U.S. Bill of Rights of 1791 and the French Declaration of the Rights of Man and Citizen of 1789.<sup>117</sup> The purpose of the UN declaration is to promote respect for the whole array of human rights, ranging from civil and political rights to economic, social and cultural rights, addressed in the thirty articles of the UDHR.<sup>118</sup> In addition to the UDHR, the International Covenant on Civil and Political Rights (ICCPR) was formulated in 1976 to protect the individual from the states. In fact, the ICCPR put Articles 2 through 21 of the UDHR into action; this convention can be considered the first generation of human rights declarations. The same year saw the birth of the second generation of human rights declaration in the form of the

<sup>116</sup> Virdhu Verma, "Debating rights in Malaysia: Contradictions and Challenges," *Journal of Contemporary Asia*, Vol. 32, No. 1 (2002), 108–131.

<sup>117</sup> E.J. Osmańczyk, *The Encyclopedia of the United Nations and International Agreement* (London: Taylor and Francis, 1985), 352.

<sup>118</sup> Jack Donnelly, *International Human Rights*, Second Edition (Oxford: Westview Press, 1998), 6.

International Covenant on Economic, Social and Cultural Rights (ICESCR). As Eldridge put it, “both conventions are fundamental to human dignity and were never intended to be separated.”<sup>119</sup>

Prior to Malaysia's independence, the Reid Commission,<sup>120</sup> which drafted the Federal Constitution, made observations and recommendations regarding provisions for human rights. Because the Constitution was to be the highest law in the land,<sup>121</sup> its human rights recommendations were accepted by the government, and the rights described in the provisions were termed fundamental liberties and enshrined in Part II of the Constitution.<sup>122</sup> The Reid Commission stated that

These concepts (fundamental rights in the Constitution) must be guaranteed by the Constitution and this is entrenched by the guarantee afforded to the Constitution as a supreme law which includes the power and duty of the courts to enforce these rights and to annul any attempt to subvert any of them by the legislative or administrative action or otherwise.<sup>123</sup>

The Constitution, with the human rights provisions embedded in it, became the foundation for human rights practice in Malaysia. In fact, the provisions of the UDHR are broadly covered in the Constitution. Besides civil and

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<sup>119</sup> Philip Eldridge, “Human Rights and Democracy in Indonesia and Malaysia: Emerging Contexts and Discourse,” *Journal of Contemporary Southeast Asia*, Vol. 18, No. 3, (December 1996): 299.

<sup>120</sup> The Reid Commission was set up to formulate and draft the Constitution of Malaysia. Also known as an Independent Constitutional Commission, this commission was headed by Lord Reid. Members of this commission included representatives from Britain, India, Pakistan and Australia. Eventually, this commission submitted a draft of ‘Merdeka’ Constitution to the Federal Legislative Council.

<sup>121</sup> Article 4 of Federal Constitution specifies that the Federal Constitution is the supreme law of the Federation and any law passed after Independence Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

<sup>122</sup> Article 5 to Article 13, Part II of Federal Constitution. Database on-line. Available from Current Law Journal at [http://www.cljlaw.com/membersentry/legislationdisplayformat.asp?MY\\_FS\\_ACT\\_1957\\_000](http://www.cljlaw.com/membersentry/legislationdisplayformat.asp?MY_FS_ACT_1957_000); accessed 21 October 2005.

<sup>123</sup> Reid Commission Report, cited in Rusniah Ahmad, “Preventive Detention: Judicial Interpretation and Legislative History,” *The Malayan Law Journal*, 3 MLJ (2004), 1

political rights, other rights in the Constitution include periodic elections<sup>124</sup> and the independence of the judiciary.<sup>125</sup> However, under Article 149 and Article 150 of the federal Constitution, power is given to the Parliament to enact any law aimed at combating “subversion” or any threats prejudicial to national security, even if the law is inconsistent with the protection embodied in Part II of the Constitution. Hence, these two constitutional provisions permitted the birth of the Internal Security Act (ISA). The ISA was introduced in 1960; it allows the police to detain “suspects” without trial. This was always the main point of contention between the fundamental rights described in Part II of the Constitution and Articles 149 and 150, which permitted the restriction of fundamental rights. On one hand, the Constitution guarantees fundamental rights for citizens; on the other hand, it limits those fundamental rights.

## **B. HUMAN RIGHTS PRIOR TO MAHATHIR’S RULE**

Because of rising communist violence in 1948, the British delayed Malaysia's independence until 1957. After independence was obtained on August 31, Malaysia faced threats not only from the communists, but also from external sources including Indonesia (confrontation between 1963 and 1966), the Philippines (the claim on Sabah in 1962), and Singapore (secession in 1965). Moreover, ethnic tensions grew over time. All of these threats contributed to undermining human rights standards in Malaysia. The human rights situation initially developed under Malaysia's first three prime ministers.

### **1. Tunku Abdul Rahman (1957 – 1970)**

The human rights situation under Tunku was generally liberal, even though he occasionally used the ISA and the Societies Act to intimidate his political opposition. In significant ways, however, he usually respected civil liberties. During his terms in office, the opposition parties could organize public rallies to present their manifestos to the voters and could freely sell their

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<sup>124</sup> Article 113 to Article 120, Part VIII of Federal Constitution. Database on-line. Available from Current Law Journal at [http://www.cjljlaw.com/membersentry/legislationdisplayformat.asp?MY\\_FS\\_ACT\\_1957\\_000](http://www.cjljlaw.com/membersentry/legislationdisplayformat.asp?MY_FS_ACT_1957_000); accessed 21 October 2005.

<sup>125</sup> Article 121 to Article 131A, Part XI of Federal Constitution, available at [http://www.cjljlaw.com/membersentry/legislationdisplayformat.asp?MY\\_FS\\_ACT\\_1957\\_000](http://www.cjljlaw.com/membersentry/legislationdisplayformat.asp?MY_FS_ACT_1957_000); accessed 21 October 2005.

newspapers to the general public. The “Malaysian Malaysia”<sup>126</sup> campaign promoted by Lee Kuan Yew illustrates Tunku’s liberalism on human rights practice. In 1964, Lee in Singapore tried to establish a foothold in Peninsular Malaysia’s politics. This challenged the Malaysian Chinese loyalty to the Malaysia Chinese Association (MCA). As a result, Lee’s action divided the MCA into factions. Besides challenging and dividing the Chinese in Peninsular Malaysia, the “Malaysian Malaysia” campaign was implicitly perceived as an attack on Malay special rights.<sup>127</sup> Surprisingly, the Tunku did not take any action against Lee. A similar outcome occurred when Mahathir sent an inflammatory letter to Tunku. In fact, Mahathir published a book, *The Malay Dilemma*, which criticized Tunku and the Malays.<sup>128</sup> In an interview with Barraclough in 1980, Tunku said, “If I had taken repressive action, I would perhaps regret one day having done so. As I explained to Parliament, this alternative of repression went very much against my feeling and conscience.”<sup>129</sup> Further, Tunku said that it would be morally wrong to use his power to silence the opposition leaders in Parliament by threats of coercion because he believed that they, too, had a duty to perform.

If Tunku was right, then the detention of opposition parties’ members was unconstitutional and acts of *mala fide* (bad faith). In reality, Tunku had ordered the police to arrest and detain, under provisions of the ISA, a number of radical Malay opposition leaders including Ahmad Boestaman (President of Parti Rakyat), Dr. Burhannudin (the leader of PAS), Aziz Ishak (President of National Convention Party) and Labor Party members. This mass detention was intended to restrict the opposition's ability to achieve success in the election. According to

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<sup>126</sup> “Malaysian Malaysia” campaign was initiated by People Action Party (PAP) led by Lee Kuan Yew. This campaign was opposed to a “Malay Malaysia” in which, it claimed, UMNO dominated the Alliance government. PAP demanded equality for all races, stating that “people, regardless of their races, religion and different cultural backgrounds, should get a just share of the good things of life as citizens of equal worth.” See Andaya and Andaya, 288 and R.K Vasil, *Politics in a Plural Society* (Oxford: Oxford University Press, 1971), 296.

<sup>127</sup> Snodgrass, 51.

<sup>128</sup> Mahathir Mohamad, *The Malay Dilemma* (Singapore: Times Book International, 1970), 15; see also Simon Barraclough, “The Dynamics of Coercion in the Malaysian Political Process,” *Modern Asian Studies*, Vol. 19, No. 4, (1985): 801.

<sup>129</sup> Barraclough, 802.

Dr. Kua Kia Soong, "In 1963, just before the 1964 general elections, there were a total of 1,052 cases of ISA detention."<sup>130</sup> In addition to opposition party members, detainees under the ISA were alleged to be involved in communist activities, supporting the Indonesia confrontation campaign against Malaysia or actively involved in trade union activities.<sup>131</sup>

Tunku also used the Societies Act as a threat to de-register any organization that was perceived as having been infiltrated by communists. As usual, this threat was directed against the opposition parties. For example, in 1964, the Labor Party and the PSRM were threatened with de-registration, which did eventually take place in 1972. Another party, the DAP, was nearly de-registered after failing to submit statements of income.

Under the leadership of Tunku, Malaysia suffered from growing ethnic tensions between the Malay and other ethnic minorities. At the same time, there was factional infighting within UMNO between the "old guard" and the "young Turks." All of these problems affected civil and political rights in Malaysia. In fact, from 1957 to 1969, the government amended the Federal Constitution three dozen times with the aim of transferring more power to the executive and thus limiting human rights provisions. These amendments also gave birth to more repressive legislation, such as the Official Secrets Act and the Sedition Act.

As mentioned above, the human rights situation under Tunku seemed liberalized and relaxed regarding Lee and Mahathir. On one hand, Tunku seemed to be lenient toward Lee and Mahathir, but on the other hand, he seemed to harsh with the opposition political parties. The retention of the ISA was justified as part of the fight against the communist insurgency and later to preserve racial harmony. However, in some circumstances the ISA was used for reasons other than communist suppression, such as to "block political challenges

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<sup>130</sup> Kua Kia Soong, "Malaysia: The Struggle of Human Rights in Malaysia," *Human Rights Solidarity*, Vol. 9, No. 1, (1999). Database on-line. Available at <http://www.hrsolidarity.net/mainfile.php/1999vol09no01/776/>; accessed 8 February 2006.

<sup>131</sup> Crouch, *Government and Society in Malaysia*, 81.

and intimidate critics.”<sup>132</sup> The government's use of the ISA was not overseen by any other agency or organization. Thus it was left to the whim and fancy of the prime minister when and how to use the ISA. This phenomenon was difficult to explain. But to the prime minister, the most important issue was the unity of the Malays.<sup>133</sup> In reality, the power struggle among the UMNO elites, as well as the Malay's dissatisfaction with Tunku, led to the factionalism in UMNO and some of its elites' desire to gain power for themselves.

It is difficult to say that during Tunku's period human rights were abused or eroded because at the time, political leaders did not show any political interest in human rights issues. National and economic development was more important and replaced “commitment to values,” which was more suited to the “solidarity-building” post-independent period.

On the grassroots level, the ethnic tension between the Chinese and Indian minorities and the Malay majority had grown. The government did not redress this matter quickly, and as a result, the 1969 race riot occurred, which caused a dramatic change in the political system.

## **2. Abdul Razak (1970 - 1976)**

The 1969 racial riot disclosed the strength of the undercurrent of distrust among the various ethnic communities. As a result, several actions, including the use of coercive measures, were taken by Razak<sup>134</sup> to strengthen national unity. The first action was to declare the Emergency and to suspend the Parliament for two years. The second action was to arrest the opposition parties' members under the ISA. This continued the trend that whenever there was a crisis in Malaysia, the opposition parties would be targeted by the government.

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<sup>132</sup> Crouch, *Government and Society in Malaysia*, 81.

<sup>133</sup> Vasil, 291.

<sup>134</sup> After the 1969 riot, Tun Abdul Razak headed the National Operation Council (NOC). After Tunku resigned, he replaced Tunku as the Second Prime Minister. He and his council took drastic actions to ensure that the same violent riots would not happen again, including tightening law and order. These actions were to enhance national unity.

Because the unity of ethnic communities was the main goal in the post-1969 riot period, the government's first action was to create the Department of National Unity. This department aimed to formulate a national ideology and to create new social and economic programs.<sup>135</sup> The government used emergency legislation such as the ISA and the Sedition Act to ensure racial harmony. In so doing, the definition of "sensitive issues" in the Sedition Act was expanded to include the special rights of the Malay and the special privileges of Malay rulers. From this starting point, the freedom of speech, freedom of press and freedom of expression were restricted. The government also took preventive actions against individuals who it perceived posed "a challenge to the regime or a serious threat to the public order."<sup>136</sup> For instance, the government arrested Lim Kit Siang under the ISA for his harsh criticism of the Alliance government during the 1969 election campaign.

Second, the government controlled the publication of material that might offend other ethnic communities. Publishers were required to obtain licenses prior to operations and these licenses could be revoked any time if the publishers violated "national sensitivities" or "failed to serve national development goals."<sup>137</sup> For example, during Operation Lalang, three newspapers (*The Star*, *Watan* and *Sin Chew Jit Poh*) were suspended.<sup>138</sup> This practice has continued. During the political crisis in 1998, the government banned the Malay magazines *Detik*, *al-Wasilah* and *Eksklusif* because of their "questionable" contents.<sup>139</sup> And recently, the *Sarawak Tribune* was suspended immediately due to publishing an article entitled, "Cartoon: Not much impact here," which was accompanied by a

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<sup>135</sup> Andaya and Andaya, 298.

<sup>136</sup> Ibid., 814.

<sup>137</sup> For further detail, see Crouch, *Government and Society in Malaysia*, 85.

<sup>138</sup> Khoo, 284 – 285.

<sup>139</sup> Mustafa K. Anuar, "Muzzled": The Media in Mahathir's Malaysia," in *Reflections: The Mahathir's Years*, ed. Bridget Welsh, (Washington D.C.: John Hopkins University, 2004), 482; see also Zaharom Nain, 137.

caricature of the Prophet Muhammad.<sup>140</sup> Those two reasons were broad enough to cover political offenses. Any speeches or writings that might instigate ethnic antagonism were banned.

Third, Razak broadened the scope of membership in the Alliance party and maintained the Alliance party's concept of conciliation. Instead of three major parties (UMNO, MCA, MIC), Razak incorporated more parties, including a number of opposition parties, into the coalition. He also changed the name of the party to "Barisan Nasional" (BN) or National Front. This type of incorporation dampened the electoral competition and at the same time enhanced the UMNO's political domination in the coalition.

Fourth, Razak introduced strict labor legislation to maintain stability and manage industry relations peacefully. Several amendments were made to the Industrial Relations Act and the Trade Unions Act. The reason behind these amendments was to prevent the growth of a strong trade union movement, as the government was afraid that the unions might fall under the influence of the opposition parties.<sup>141</sup> Under these amendments, unions were no longer allowed to bargain on issues designated as "managerial prerogatives," officers or employees of political parties were barred from holding any office in the trade unions, and the creation of political funds in the trade unions was abolished.<sup>142</sup>

Fifth, as university students' political awareness increased in the 1970s, they started to demand greater use of the Malay language in official correspondence. They also protested the Thai Prime Minister's visit to Malaysia in 1971, as he was perceived as repressing Muslim Malays in southern Thailand.<sup>143</sup> However, the major incidents that made government react harshly to

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<sup>140</sup> The Star Newsdesk, "Sarawak Tribune Suspended with Immediate Effect," The Star Online (Thursday February 9, 2006). Available at <http://thestar.com.my/news/story.asp?file=/2006/2/9/nation/20060209210947&sec=nation>; accessed 25 February 2006.

<sup>141</sup> Ibid., 90.

<sup>142</sup> Fatimah Said, Roza Hazli and Saad Mohd Said, *The Determinants of Trade Unions Membership Growth in Malaysia*, FEA Working Paper No. 2001-13, 1–26, (December 2001), 12–13. Database on-line, available at <http://www.cassey.com/fea2001-13.pdf>; accessed 5 February 2006.

<sup>143</sup> Crouch, *Government and Society in Malaysia*, 92.

students occurred in 1974, when they demonstrated in support of squatters in Johor Baru in September, in sympathy with the peasants in Baling in November, and held a large demonstration in Kuala Lumpur in December. As a result, thousands of students were arrested under the ISA and the main leaders were detained, including Anwar Ibrahim, Ibrahim Ali and Syed Hussin.<sup>144</sup> Following these demonstrations, the government amended the University and Universities Colleges Act (UUCA), prohibiting students and faculty members from getting involved in or joining any organizations, political parties or trade unions without their universities' permission. Students also were not allowed to have any political affiliations with the political parties and the university faculty was not permitted to run for office or participate in campaigns.

In summary, one could argue that in Malaysia during the Razak period, human rights shrank and the situation was tightened. The government consolidated its power through legislation and amendments to the Constitution. Certain aspects of civil and political rights, such as freedom of speech, freedom of assembly, freedom of expression and freedom of association were curtailed. Communists were not the only target of the government. Opposition parties, university students and faculty and trade union activists were also targeted, and the ISA was used as a tool to silence these groups. As Razak put it,

The object of preventive detention is to safeguard security of the country and not punish to persons of crime [sic] . . . The government has no desire whatsoever to hinder healthy democratic opposition in any way. It is the enemies of democracy who will be detained.<sup>145</sup>

However, in reality, this was not always the case, as the government contradicted these statements by targeting opposition parties.

### **3. Hussein Onn (1976 – 1981)**

When Razak died in 1976, Hussein, the deputy prime minister, assumed the premiership. During his time, several minor factional crises within UMNO

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<sup>144</sup> During that time, Anwar Ibrahim was the President of Angkatan Belia Islam Malaysia (ABIM), and Ibrahim Ali was the student leader and Syed Husin the Secretary General of PSRM.

<sup>145</sup> Abdul Razak, quoted in Yusof, 30.

occurred as well as a serious conflict between two components of BN party, namely UMNO and PAS. The MCA also faced an internal crisis which had negative impacts on the BN and national politics. In order to defuse the situation, the government under Hussein arrested two deputy ministers, one MCA official, two DAP members of parliament, the chairman of PSRM and two Malay journalists under the ISA. They were accused of "direct involvement in activities in support of the communist struggle for political power in Malaysia."<sup>146</sup>

The trade unions' policies were not in accordance with Hussein's government policies. Jomo and Todd, in *Trade Unions and the State in Peninsular Malaysia*, state that "in post-Razak [times] the government tended to adopt uncompromising, intolerant and unaccommodating attitudes towards trade unions."<sup>147</sup> For instance, the dispute between the Malaysia Airline System (MAS) and the Airlines Employees Union (AEU) in 1979 illustrated that the government was willing to use any method to end the dispute. The government detained some union activists under the ISA and subsequently de-registered the union. Hussein had warned the trade unions not to use pressure to support their fight or to take any action which might deter investors or threaten the country's security. The warning demonstrated that the government would not hesitate to take action against the union.<sup>148</sup>

During Hussein's premiership, the situation regarding civil and political liberties remained unchanged. The ISA was still a useful tool and was used by Hussein to defuse heated crisis situations. For example, the ISA was used against antagonist groups in UMNO and trade union activists.

Between 1957 and 1981, civil and political rights situation in Malaysia could be considered liberal despite the restriction of several rights. In general, the rights of Malaysian citizens were stipulated and guaranteed in the federal Constitution. However, over time, the Constitution was amended to restrict rights

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<sup>146</sup> Crouch, *Government and Society in Malaysia*, 101 – 102.

<sup>147</sup> K.S. Jomo and P. Todd, *Trade Unions and the State in Peninsular Malaysia* (Oxford: Oxford University Press, 1994), 21.

<sup>148</sup> Said, Hazli and Mohd Said, 14.

and give more power to the executive. There was no clear polarization of the civil and political rights situation in Malaysia during those years, but it is clear that civil and political rights shriveled and more restrictions were imposed during Razak's period.

### **C. THE HUMAN RIGHTS SITUATION UNDER MAHATHIR (1981 - 2003)**

Mahathir took office on July 16, 1981. At the early stage of his tenure, Mahathir was deemed a liberal. He released most of the people detained under the ISA and allowed more press freedom. He even lifted the ban on his controversial book titled *The Malay Dilemma*. As a consequence, people felt optimistic that a new era of tolerance had begun.<sup>149</sup> However, Operation Lalang in 1987 was deemed the end of Mahathir's liberal period. The shift in Mahathir's regime from liberalism to the authoritarian style is discussed at length in the next section. This discussion of Mahathir's regime is divided into two parts covering the periods from 1981 to 1990, and from 1990 to 2003.

#### **1. 1981 - 1990**

At the beginning, Mahathir was very responsive to the public at large when it voiced its displeasure with the new amendment to the Societies Act which was introduced during Hussien's period. This new amendment required "politically motivated" organizations to register as political societies; the Registrar was given broad power to declare any organization as "political." The aim of this amendment was to differentiate social groups which would likely engage in political activity from those which were non-political.<sup>150</sup> In response to public unhappiness, the government amended the Societies Act to undo some of the most controversial provisions.<sup>151</sup> However, from 1983 onwards, Mahathir's regime showed a definite turn toward authoritarianism and the government started to tighten its control over several institutions. This shift was based on several factors. The constitutional crisis between UMNO and the royalty,

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<sup>149</sup> Means, *Malaysian Politics: The Second Generation*, 86.

<sup>150</sup> See Milne and Mauzy, 110 – 111 and Crouch, *Government and Society in Malaysia*, 94.

<sup>151</sup> Lim Teck Ghee, "Nongovernmental Organizations in Malaysia and Regional Networking," in *Emerging Civil Society in the Asia Pacific Community: Nongovernmental Underpinnings of the Emerging Asia Pacific Regional Community*, ed. Yamamoto Tadashi, 165–182 (Singapore: Institute of Southeast Asian Studies, 1995), 167.

UMNO's factionalism, an internal crisis in MCA, the Sabah crisis, financial scandal and dissatisfaction with Mahathir's leadership were factors that made Mahathir shift dramatically to authoritarianism (see Table 4). In short, the effects of these factors was to "solidify the power of the executive [which] included stripping the monarchy of much of its power; cracking down on opposition to the government; and severely diminishing the abilities of the judiciary to serve as a checks and balance on executive power."<sup>152</sup>

Table 4. Political Events, Principal Outcomes and Significance, 1981 – 1990  
(From: Khoo Boo Teik, *Beyond Mahathir – Malaysian Politics and its Discontents* (London and New York: Zed Books Ltd, 2003), 6 – 7).

Year(s)	Political Event(s)	Principal Outcome	Major Significance
1981	Hussien Onn retires	Mahathir becomes Prime Minister	Commencement of reformism and liberalism
	Musa-Razaleigh UMNO Deputy President contest	Musa wins and becomes Deputy Prime Minister (DPM)	Indications of UMNO's factionalism
1982	General Election	1 <sup>st</sup> BN victory led by Mahathir	Mahathir's new economic policies
1983-84	Constitutional crisis	Stalemate between UMNO and royalty	Centralization of executive power
1984	2 <sup>nd</sup> Musa-Razaleigh contest	Musa wins, Razaleigh loses finance ministry	Deepening UMNO factionalism
1984-85	MCA crisis	Tan Koon Swan becomes MCA president	Culmination of business and politics in MCA
1986	Sabah crisis	Rise of Joseph Pairing Kitingan and Parti Bersatu Sabah	Kadazandusun consciousness and federal-state strain
1986	February: Musa resigned as DPM	Ghafar Baba appointed DPM	Dissatisfaction with Mahathir's leadership
	General election	UMNO's and DAP's triumphs	Mahathir remain in power
1986-87	Musa and Razaleigh form Team B	Team B prepares to challenge Team A	Peak of UMNO's factionalism
1987	UMNO election	Team A's narrow victory	Purge of Team B and UMNO split
	Operation Lalang	Mass arrests of opponents	End of Mahathir liberalism
1988	UMNO's de-registration as a party	Formation of UMNO Baru	Team B dissidents excluded
	Judicial crisis	Impeachment of Supreme Court judges	Mahathirist authoritarianism
1988-89	Several by-elections: mixed victories	Persistent dissent against UMNO Baru	Inconclusive test of UMNO strength
1989	Parti Semangat 46 formed	Razaleigh leads Team B in opposition	Basis of new coalition in opposition
1990	General election	Barisan Nasional's victory	Two coalition system; PAS's return in Kelantan

<sup>152</sup> Schneider, 46.

At the beginning of 1987, UMNO faced a crisis arising from the contest for the presidency. Mahathir's position as a party leader was challenged and he nearly lost despite winning the election with a slim majority of 43 votes. Eleven of UMNO's members were dissatisfied with the election and challenged the validity of the result in court. As a result, the High Court ruled that UMNO was an illegal party. On appeal, the Supreme Court upheld the decision. This crisis put UMNO and Mahathir's political survival at stake. This crisis also led to the removal of the Lord President and two other judges in 1988.

In October 1987, faced with the possibility of race riots, Mahathir abandoned all liberal pretense and launched Operation Lalang. Hundreds of people were arrested and the operation closed down three newspaper publishers. These people were accused of creating racial tension in the country and of manipulating the liberal and tolerant attitude of the government.<sup>153</sup> The government actions were taken to preserve racial harmony and in the interest of internal security. In an interview with the *Far Eastern Economic Review*, Mahathir stated that, "The threat is from the inside . . . So we have to be armed, so to speak. Not with guns, but with the necessary laws to make sure the country remains stable."<sup>154</sup> The aftermath of the operation was that the government had a valid justification for restricting fundamental liberties by tightening the grip of the executive.

During his subsequent time in office, Mahathir strengthened and enhanced executive power and undermined all the checks and balances of the governmental institutions. He amended the Constitution several times so that tougher laws were enacted at the expense of individual rights; the opposition in Parliament to the dominant UMNO party came to have little importance. In short, Mahathir, in unprecedented actions, changed Malaysia's fundamental

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<sup>153</sup> Johan Saravanamuthu, "Operation Lalang Revisited," *Aliran Monthly*. Database on-line. Available at <http://www.aliran.com/hr/js3.html>; accessed 9 May 2005.

<sup>154</sup> See the *Far Eastern Economic Review*, October 28, 1996, 18 – 27.

constitutional system. These changes resulted in criticism by the population who were worried because when the executive holds too much power, it is dangerous.<sup>155</sup>

Mahathir maintains that human rights should be seen in the context of different economic and social realities and the distinctive values system of the country.<sup>156</sup> He further calls for a "rethinking" of human rights. He argues that developing countries like Malaysia need to have their own human rights standards which fit their level of development as well as their particular cultural values.

## **2. 1990 – 2003**

Mahathir suppressed human rights, especially civil and political rights, so that Malaysia's human rights practices gradually declined from its independence in 1957.<sup>157</sup> Several human rights violations occurred under Mahathir's premiership. The Anwar case was the watershed of human rights issues in Malaysia. In September 1998, Anwar, Mahathir's deputy prime minister, was arrested and charged with corruption and inappropriate sexual behaviour. Descriptions of the case were published locally and internationally. Mahathir subsequently used the ISA to arrest and detain sixteen of Anwar's political associates. He also used the law to legitimize his actions against journalists, university students, opposition political party leaders, businessmen and others. This incident negatively affected public perceptions of human rights and the administration of justice in Malaysia.<sup>158</sup> Mahathir's treatment of Anwar and the way the court conducted the Anwar trial resulted in criticism from the international community. Before stepping down as Prime Minister, Mahathir defended his ISA

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<sup>155</sup> See the *Far Eastern Economic Review*, October 28, 1996, 19-21.

<sup>156</sup> World Youth Foundation, vii.

<sup>157</sup> Prof. Johan Saravanamuthu, *Report on Human Rights in Malaysia*, 2001, available at <http://www.aliran.com/hr/jsl.htm>; accessed 9 May 2005.

<sup>158</sup> Amnesty International Report on Malaysia, *Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy*, Amnesty International Report, (September 1999), 19. Database on-line. Available at <http://web.amnesty.org/library/Index/ENGASA280061999?open&of=ENG-MYS>; accessed 26 July 2005.

record, saying, “We have to put a stop to menace by all means, even before it happens. A law like the ISA, which is not bluntly used, is necessary as a preventive measure.”<sup>159</sup>

On March 25, 1999, the Malaysian government established a National Commission on Human Rights (SUHAKAM)<sup>160</sup> under the Human Rights Commission of Malaysia Act of 1999. This Act is consistent with the Paris Principles relating to the Status of National Institutions. The main objectives of the SUHAKAM commission are to promote and protect human rights and fundamental freedoms in Malaysia. The SUHAKAM commission is an independent body that the people can appeal to with their grievances and dissatisfactions regarding human rights abuses. The commission will redress the situation where possible. It has been given power by the Parliament to look into complaints of human rights infringements; it also advises and assists the government in formulating legislation and procedures on human rights. Thirteen commissioners were appointed by the King on the recommendation of the Prime Minister for a two-year tenure period. As a result, questions have been raised about the commission's independence. Furthermore, since its inception, SUHAKAM has been accused of being a government tool to silent criticism from domestic and international NGOs; it is charged with being aimed at improving the government's image rather than at addressing the root causes of abuse.<sup>161</sup> In a similar vein, according to Tikamdas, the establishment of SUHAKAM has been only cosmetic and intended to disguise the authoritarian regime, cover up public officials' scandals and improve the government's image.<sup>162</sup>

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<sup>159</sup> Mahathir, “Government Never Abused ISA for Power, Personal Gain,” *New Strait Times*, October 31, 2003.

<sup>160</sup> SUHAKAM is the acronym for “Suruhanjaya Hak Asasi Manusia Malaysia” which means “Human Rights Commission of Malaysia.”

<sup>161</sup> Geoffrey Robinson, “Human Rights in Southeast Asia: Rhetoric and Reality,” in *Southeast Asia in the New World Order: The Political Economy of a Dynamic Region*, ed. David Wurfel and Bruce Burton, (New York: St. Martin's Press, 1996) 75.

<sup>162</sup> Ramdas Tikamdas, “The New Abu Talib – led SUHAKAM: Still an Independent Commission? or BN's Tool?” *Aliran Monthly*. Database on-line. Available at <http://www.aliran.com/monthly/2002/4i.html>; accessed 26 April 2005.

Interestingly, the September 11, 2001 attacks on the United States saved Mahathir from continued criticism by the international communities. The Global War on Terror (GWOT) gave him an excuse to continue using ISA and other emergency laws to carry out political repression, mistreatment and torture, all the while engaging in more rights abuses.

In 2002, Mahathir sacked five commissioners of SUHAKAM who were deemed to be pro-Western for defending human rights standards. These commissioners were vocal in their comments regarding human rights violations by the government and specifically by the police. In one of the inquiries into an anti-government protest in November 2000, the commissioners found that the police had used excessive force against the protestors.<sup>163</sup> Further, they recommended legal reforms to the government, including the abolition of the ISA's provision that political activists could be detained without trial. They stated that detention without trial amounted to a human rights violation. They also criticized the government for consistently using the ISA "against the political dissidents and suspected terrorists alike."<sup>164</sup> These recommendations by the commission angered Mahathir, who terminated their tenure as commissioners.

Although the government proclaimed its absolute right to take whatever actions it deemed necessary to ensure the maintenance of peace and stability, various parties ranging from local and international NGOs to regional and international governments instead condemned the punitive actions of the Malaysian government. In fact, the NGOs in the country have commented that "the Mahathir-led government, in power from 1981–2003, has inflicted some very serious damage to human rights in Malaysia . . . whose effects we have not

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<sup>163</sup> This inquiry was conducted by SUHAKAM to investigate the violation of human rights by the police during the KESAS highway gathering in November 2000. This gathering was organized by NGOs to protest the detention of Anwar Ibrahim and ten of his political associates. For details, see SUHAKAM, *KESAS Highway Inquiry Report*, (Kuala Lumpur, 2001).

<sup>164</sup> Mark Baker, "Mahathir Takes Axe to Malaysia's Human Rights Panel," *The Age* (Singapore, 24 April 2004). Database on-line. Available at <http://www.theage.com.au/articles/2002/04/23/101944124312.html>; accessed 26 May 2005.

recovered from.”<sup>165</sup> It is quite difficult to get exact numbers of ISA detainees. However, NGO statistics indicate that the numbers have increased since 2000 (Table 6).

Table 5. Number of Internal Security Act detainees in Kamunting (After: Figures were provided in written answers by Prime Minister Abdullah Ahmad Badawi, who is also Minister for Internal Security, to questions from parliamentary opposition leader Lim Kit Siang, whose statement was quoted by AFP in news reports dated 3 February 2005. Cited in Aliran’s ISA Watch, Internal Security Act in Malaysia ISA Detention, Aliran online. Available at <http://www.aliran.com/monthly/2001/3e.htm>; accessed 14 February 2006.)

Held for alleged involvement in:	End-2000	3 July 2001	Nov 2001	June 2002	June 2003	Dec 2003
Human trafficking syndicate		21	21	19		-
Miscellaneous	4	3	3	4	8	2
Al Ma'unah arms heist	29	15	15	15	15	-
Reformasi activities	.	6	5	6	-	-
Free Acheh Movement	1	4	3	2		-
Firearms	3	3	3	-	-	-
Currency counterfeiting	.	10	8	8		6
Document falsification	.	7	7	7	-	-
Malaysian Mujahidin Group	23	-	13	19	18	17
Jemaah Islamiah	.	-	-	33	58	66
<b>Total</b>	<b>60</b>	<b>69</b>	<b>78</b>	<b>113</b>	<b>99</b>	<b>91</b>

In regard to the categories of detainees, there were various target groups which differed from time to time depending on the threats. In the 1960s, the ISA was used against the communist insurgents, but the trend has changed. The ISA

<sup>165</sup> NGO, Aliran Monthly, Vol. 25, Issue 8 (2005). Database on-line. Available from <http://www.aliran/monthly/2005/8c.html>; accessed 26 May 2005.

has been used to arrest “suspect” terrorists, “Reformasi” activists, university students, bloggers, passport forgers and those suspected of involvement in other offenses that might be prejudicial to national security (Table 7).

Table 6. Waves of ISA arrests in Malaysia since April 2001 (From: Aliran’s ISA Watch, Internal Security Act in Malaysia ISA Detentions, Aliran Online, Database on-line. Available at <http://www.aliran.com/monthly/2001/3e.htm> (ed. 14 February 2006)).

Targeted group	Period	No. held
<b>Reformasi Activists</b>	Apr 2001	10
<b>University Students</b>	July 2001	2
<b>Militants/terrorists</b>	May - July 2001	6
<b>KMM members</b>	Aug 2001	10
<b>KMM members</b>	Sept - Oct 2001	8
<b>KMM members</b>	Dec 2001 - Jan 2002	13
<b>KMM members</b>	Jan 2002	10
<b>KMM members</b>	Apr 2002	14
<b>KMM member</b>	Sept 2002	1
<b>KMM members</b>	Oct 2002	5
<b>KMM members</b>	Nov 2002	3*
<b>Terror rumors via e-mail</b>	Dec 2002	10*
<b>JI members</b>	Dec 2002	2*
<b>JI members</b>	Jan 2003	4*
<b>JI members</b>	Feb 2003	3*
<b>JI member</b>	Mar 2003	1
<b>JI member</b>	June 2003	1
<b>JI member</b>	Aug 2003	1
<b>Suspected involvement in JI activities</b>	Nov 2003	13
<b>Alleged JI involvement</b>	Jan 2004	2 (1*)
<b>Indonesian members of the group behind the Bali bombings</b>	Jan/Feb 2004	6*

Targeted group	Period	No. held
<b>Alleged forgery of passports/travel documents</b>	April 2004	1
<b>Alleged involvement in nuclear parts network</b>	May 2004	1
<b>Immigration dept officials allegedly supplying Malaysian passports to a syndicate</b>	2004	2
<b>Alleged Thai separatist</b>	Jan 2005	1
<b>Allegedly issuing forged documents to human trafficking syndicates</b>	Sept 2004 - Jan 2005	9

\* Authorities have not revealed their identities.

The government claims that restrictions on civil and political rights are necessary, first, to preserve racial stability in a plural society.<sup>166</sup> It is important for the government to ensure ethnic communities live in peace and harmony. The government does not want a repeat of the 1969 race riots.

Second, the restrictions on civil and political rights also cover up government officials' wrongdoing. For example, Irene Fernandez was convicted of disclosing the maltreatment and abuses in the illegal immigrants' detention camp. Similarly, Ezam Mohd Noor was sentenced to imprisonment for revealing the investigation by the Anti Corruption Agency (ACA) of corrupt practices by a government minister and chief minister.

Third, restrictions imposed on civil and political rights helped to protect Mahathir's position. In his view, if the population was given too much freedom, it might escalate tension in the Barisan Nasional, which would endanger his position as prime minister. He blamed the press for exploiting racial issues. This exploitation had forced Mahathir to use coercive measures to weaken the opposition and frustrate his enemies within UMNO.<sup>167</sup>

<sup>166</sup> Crouch, *Government and Society in Malaysia*, 95 and Khoo, 285.

<sup>167</sup> Clark D. Neher and Ross Marlay, *Malaysia--Democracy and Development in Southeast Asia: The Wind of Change* (Colorado: Westview Press Inc., 1995), 107.

Fourth, by restricting civil and political rights, Mahathir protected his UMNO party from court decisions that might have limited his power. As noted above, in 1988 UMNO was declared an illegal party by the Supreme Court. As a result, Mahathir lost his position as prime minister. In response, he established UMNO Baru; within one day, his application was approved by the Registrar of Societies. During that short period, Ling Leong Sik held the appointment of prime minister. This incident really jeopardized UMNO and Mahathir's political survival.

One could say that the reasons Mahathir continued to impose restrictions on civil and political liberties was, first, he always believed that he was completely right. He has a high level of self-confidence. He believes that plans must be fulfilled without any barriers. Thus, he felt justified doing whatever seemed necessary to stay in power, including violating human rights.<sup>168</sup>

Second, Mahathir does not believe in democracy. He has said this on many occasions. To him, to have a democracy it is sufficient to have periodic elections and government was elected by the people. He rejected the western definition of democracy and held the view that Malaysia's democracy is different than other countries'. He held that Malaysia is a democratic country based on the following criteria: direct representation of the public, majority rule through a government of elected representatives, periodic elections allowing for possible replacement or change in government, separation of power between executive, judicial and legislative branches, and responsiveness of elected representatives and the government to public opinion.<sup>169</sup> He even urged the population to shun democracy because democracy will cause chaos and trouble. Muzaffar Tate portrayed Mahathir as a "benevolent despot – like the 18<sup>th</sup> century autocratic monarchs of Russia, Prussia and Austria who were so styled – full of good intentions but with bad ways of carrying them out."<sup>170</sup>

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<sup>168</sup> Nick Papadopoulos, "Malaysia under Mahathir," *Time Asia* (18 July 2001) Database on-line. Available at <http://www.time.com/time/asia/news/printout/0,9788,168000,00.htm>; accessed 25 May 2005.

<sup>169</sup> Ibid.

<sup>170</sup> Muzaffar Tate, "The Mahathir Legacy: The Bottom Line Is that Mahathir Does Not Believe in Democracy," *Aliran Monthly*, Database on-line. Available at <http://www.aliran.com/monthly/2003c/8b.html>; accessed 17 January 2006.

Third, continual imposition of human rights restrictions strengthened Mahathir's position in power. Mahathir did not hesitate to take action against those who might threaten his position. For example, Anwar was sacked from the Deputy Prime Minister Office.

Fourth, Mahathir relied on the repressive laws against his enemies. He used the ISA, the OSA, the Sedition Act and PPPA to silent his dissidents. Lim Kit Siang, Karpal Singh, Anwar Ibrahim and Dr. Syed Hussin were among the people detained under the ISA.

Mahathir took the initiative to consolidate executive control and eliminate autonomous nodes of power. Even though repressive legislation was already enacted in the 1950s and 1960s, these laws were further amended by Mahathir to close the loopholes whenever the government lost a case or the court decisions were not in his favor. Each fundamental liberty enshrined in Constitution had its own legislative restriction. As described in Table 8, these restrictions are mostly by legislative action and do not give detainees room for judicial review.

Table 7. Civil and Political Rights and Their Restrictions (From: Johan Saravanamuthu, Human rights in Malaysia – Regression or progression, Aliran Monthly, Database on-line. Available at <http://www.aliran.com/hr/js1.html>; accessed 21 June 2005).

Constitutional Provision	Right of Freedom	Legislative Restriction
Article 5	Liberty of the person	Internal Security Act, 1960: Restricted Residence Enactment (CAP. 39); Sec. 117, Criminal Procedure Code (CAP. 6)
Article 6	Protection against slavery and forced labor	Essential (Self-Reliance) Regulations, 1975; National Service Ordinance
Article 9	Protection against banishment; freedom of movement	ISA 1960; Banishment Act, 1948; Immigration acts, 1959 and 1963
Article 10(1)(a)	Freedom of speech and expression	Sedition Act, 1948 (and Amendments, 1971); Official Secrets Act, 1972 (and Amendments, 1986); Printing Presses and

Constitutional Provision	Right of Freedom	Legislative Restriction
		Publishing Act, 1948 (Amendment 1988); Control of Imported Publications Act, 1959
Article 10(1)(b)	Freedom of peaceful assembly	Public Order (Preservation) Ordinance, 1958; Police Act, 1967 (and Amendments, 1988)
Article 10(1)(c)	Freedom of association	Trade Unions Act, 1959 (and 1980 and 1989 Amendments); Societies Act, 1966 (and 1981 Amendments); University and University Colleges Act, 1971 (and 1975 Amendments) - discipline of Student Rules and Discipline of Staff Rules
Article 10(1)(c)	Freedom of association and right to industrial action, including strike	Essential (Prohibition of Strikes and Prescribed Industrial Actions) Regulations, 1965; Industrial Relations Act, 1967, Amendment, 1971 and 1975
Article 121	Principle of judicial review	Amendments to Article 121, 1988; Amendments to ISA, 1988; Amendments to ISA, 1989

#### **D. HUMAN RIGHTS SITUATION AFTER MAHATHIR (2003 – 2005)**

After Mahathir's retirement in 2003, his deputy Abdullah Ahmad Badawi took the premiership. He was the fourth of Mahathir's deputies. Abdullah started his premiership with promises of change—to combat corruption, to improve human rights and to improve the image of the police. On March 2004, the nation's eleventh general elections were held after an eight-day campaign. Abdullah won a decisive mandate due to his personal appearance, religion and, most importantly, his mandate against corruption. Brad Adam, Executive Director of Asia Division of Human Rights Watch, urged Abdullah to end Mahathir's human rights abuses. He said,

Mahathir's human rights legacy is not one to be proud of. Badawi needs to do things differently on human rights. Badawi has the opportunity to make Malaysia a leader in the region by promoting political and cultural pluralism.<sup>171</sup>

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<sup>171</sup> Human Rights News, "Malaysia: New Prime Minister Should End Mahathir's Era Abuses," (29 October 2003). Available at <http://hrw.org/English/docs/2003/10/29/malays6486.htm>.; accessed 25 February 2006.

After three years in office, “Abdullah’s promises of democracy reform have not been translated into real substantive change.”<sup>172</sup> However, he seems to have relaxed control over the judiciary. In this respect, the courts have been able to reclaim some independence as stipulated in the federal Constitution. In several instances, the courts’ decisions were free from executive intervention. In one case, the Shah Alam High Court overturned the conviction and sentence of Ezam Mohd Nor, the Keadilan Youth wing.<sup>173</sup> A second instance occurred in August 2004, when the Federal Court overturned Anwar’s conviction for sexual misconduct; he was immediately freed from prison. Though exonerated of the sexual misconduct allegation, he cannot be active in politics for five years, since his six year conviction for corruption still stands. And, in a third instance, in October 2004 the Penang High Court issued a ruling favorable to the Keadilan candidate Datin Seri Wan Azizah in the general election petition contention.

Despite returning some independence to the judiciary, judicial independence is not fully restored. Abdullah has shown no sign of changing the government’s arbitrary and oppressive use of the ISA. The government under Abdullah has maintained Mahathir’s legacy of an authoritarian style of governance. In other words, repressive laws are still enforced. The civil and political rights that were restricted under Mahathir are still curtailed. Freedom of speech and expression are no better. The abolishment of the ISA seems only a dream. Defending the ISA, Abdullah has said that “we have in place tough laws and some of them are preventive in nature . . . We do not apologize for them.”<sup>174</sup>

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<sup>172</sup> Suaram, “Malaysia: Civil and Political Rights Report 2005: Executive Summary,” (2005). Available at <http://www.suaram.net>; accessed 25 February 2006.

<sup>173</sup> Ezam Mohd Nor had been convicted under the OSA of having circulated classified investigation documents sent by the Anti-Corruption Agency to Attorney General Chambers regarding the alleged corruption investigation of International Trade and Industry Minister Dato Rafidah Aziz and former Malacca Chief Minister Tan Sri Abdul Rahim Thamby Chik. See William Case, “How’s My Driving? Abdullah’s First Year as Malaysian PM,” *The Pacific Review*, Vol. 18, No. 2, (June 2005): 152; and International Mission of Investigation, “Malaysia – “The Bao Constrictor”: Silencing Human Rights Defenders,” *International Federation Human Rights (FIDH) and World Organization against Torture (OMCT)*, Database on-line. Available at [http://www.omct.org/pdf/observatory/Malaysia\\_SilencingHRDefenders.pdf](http://www.omct.org/pdf/observatory/Malaysia_SilencingHRDefenders.pdf); accessed 21 June 2005.

<sup>174</sup> Dato’ Seri Abdullah, quoted from Case, “How’s My Driving? Abdullah’s First Year as Malaysian PM,” 153.

Echoing his boss's statement, Nazri Aziz, Minister in the Prime Minister's Office, strongly believes that the government should have strong control over the population. He says that "the concept of separation of power between the legislative, judiciary and executive is 'too idealistic' to be implemented in the country."<sup>175</sup>

SUHAKAM's performance has been very frustrating. SUHAKAM has failed to demonstrate the courage to uphold its purpose. This commission was deemed a tool of the government tool since the appointment of a new chairman and five other commissioners who have not stood up for civil and political rights in Malaysia. These appointees were senior civil servants who all along had worked for the government of Mahathir.

In general, the human rights situation in the post Mahathir period has not gotten better. The promises made by Abdullah to make "changes" have not been kept. As Abdullah acknowledges the need for authoritarian control, it is doubtful that there will be any improvement in the future. In his maiden speech in Parliament as prime minister, he highlighted his regime's democratic procedures.

Democracy is the best system of governance. . . . We must be open and ready to accept criticism and contrary views to ensure that a culture of democracy thrives. . . . However, democracy does not mean absolute freedom . . . . We cannot compromise when dealing with threats posed by extremism, terrorism, and militancy.<sup>176</sup>

Some argue that under Abdullah, controls on institutions other than the judiciary will remain unchanged; in fact, controls may be tightened or even worse than under Mahathir. As of now, it is difficult to see that Abdullah will make changes on human rights.

## **E. CONCLUSION**

For the past 48 years, since its independence, Malaysia has faced external and internal threats. The government succeeded in dealing with these

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<sup>175</sup> Beh Lih Yi, "Separation of Powers Too Idealistic," Says Nazri" Malaysiakini, (3 June 2004). Database on-line. Available at <http://www.malaysiakini.com/news/20040603.php>; accessed 12 December 2005.

<sup>176</sup> Dato' Seri Abdullah, in Case, "How's My Driving?," 151.

threats. But the most serious government concern right now is the internal threat. In terms of human rights, between 1957 and 1981, the standard was considered liberal although some restrictions were imposed. Over time, the federal Constitution was amended to restrict rights and give more power to the executive. Even though there was no clear polarization of civil and political rights in Malaysia during that period, it is clear that under Razak, human rights shriveled.

During the Mahathir period, human rights standards in Malaysia declined. For 22 years as prime minister, Mahathir brought the judiciary under executive control, centered more power in the government, lessened the power of the King, used the ISA arbitrarily, and used the government mechanisms for his own gain. Mahathir lowered the human rights standards of Malaysia to the point where it became a “pariah” state. He inflicted serious damage to human rights in Malaysia. Though he received criticism from the international community regarding his government's human rights practice, he did not care, nor did he respond to those criticisms. He believed that no country could claim exclusive rights on human rights. He believed that restrictions on human rights were necessary to preserve racial stability in a plural society, to cover up the government officials' wrongdoing, to defend his position, and to protect UMNO from court decisions that might have limited his power. Thus, he urged that Malaysia should have its own human rights standard according its own mold. Mahathir even sacked human rights commissioners who criticized the routine use of the ISA against political dissidents by the government. Statistics on ISA detainees demonstrate that the categories of detainees varies over time. In short, Mahathir attacked or retaliated against any critics or anyone he saw as prejudicial to national security. The bottom line of is that Mahathir's continued to restrict civil and political rights, even though it worsened internal security, because of power and to remain in his position. One could safely say that power means everything to him. As long as he remained in power, he could do anything which he found justified. He used all the mechanisms of government to ensure that his position was not being threatened. Under his rule, many human rights

violations were documented involving the freedom of assembly, expression, association and movement. Croissant argues that the longer a leader stays in the office the more he will lose touch with reality.<sup>177</sup> That what happened to Mahathir. He was not sensitive to the demands from the people and the NGOs to improve human rights standards. He felt he was always right. As Tate writes,

Mahathir is by no means an Idi Amin, Marcos or Mugabe. He has been inspired by great visions and great dreams of a mighty Malaysia. But for anyone of a liberal, democratic persuasion, the price is intolerably high. Nor is there any guarantee that once the hand of the master puppeteer has been removed unity and stability will survive.<sup>178</sup>

With all the coercive apparatus that he had available, he could silence all internal dissidents. Surprisingly, the public at large supported him. The justifications that he presented for his actions were accepted by the population. These justifications will be explained in detail in Chapter IV.

In the post Mahathir period, the standard of human rights in Malaysia has remained the same. Although there were promises to improve the human rights standard, these have so far been merely empty promises. Except for the release of Anwar Ibrahim by the Federal Court, the situation has remained stagnant. In the beginning, Abdullah seemed a promising candidate to improve the standard of human rights by combating corruption among UMNO members, civil servants and the police. But as of this time, people are still awaiting dramatic improvements. Thus one might correctly say that human rights in Malaysia are more rhetoric than reality.

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<sup>177</sup> This argument was made by Professor Aurel Croissant during a discussion at the Naval Postgraduate School, Monterey, California in the NS 3664 class on 26 January 2006.

<sup>178</sup> Tate, 5.

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#### **IV. LEGITIMIZING HUMAN RIGHTS RESTRICTIONS: THE RHETORIC AND THE REALITY**

The erosion of fundamental rights and liberties, the manipulation of the media and the blatant undermining of the institutions of state entrusted with the task of upholding the rule of law and ensuring justice and fair play should not go unchallenged! We must refuse to be intimidated. In times like this Malaysians should stand up and be counted.<sup>179</sup>

Society for Christian Reflection

This chapter examines the rhetoric and reality of legitimizing human rights restrictions in Malaysia between 1957 and 2005. The main purpose is to analyze the reasons for the change in rationalizations and how these rationalizations affected internal stability. Although the rationales given for restricting rights overlapped over time, they can be distinguished from one another for analytical purposes. The analysis in this chapter will demonstrate that four rationales can be considered the foundation of shrinking human rights in Malaysia: anti-communism, racial harmony, “Asian values” and developmentalism, and terrorism.

##### **A. THE ANTI-COMMUNIST RATIONALE**

As discussed in Chapter II, the First Emergency was declared in 1948 by the British in response to the armed struggle of the Communist Party of Malaya (CPM). The British later adopted a wide range of actions, including the Briggs Plan, which “involved a massive resettlement of thousands of people from remote areas to the relative security of new villages.”<sup>180</sup> Throughout the First Emergency, which the government declared ended in 1960, thousands of people (civilians, security forces, and communist terrorists) were killed and wounded.

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<sup>179</sup> Society for Christian Reflection, quoted in Aliran Homepage. Database on-line. Available at <http://www.aliran.com>; accessed 21 May 2005.

<sup>180</sup> Mohd Zakaria Yadi, “Malaysia Emergencies: Anthropological Factors in the Success of Malaysia’s Counterinsurgency,” (Master’s Thesis, Naval Postgraduate School, December 2004), 1–2.

Table 8. Numbers of people killed, wounded, missing, captured and surrendered during the First Emergency (1948 – 1960) (From: Compiled by the author based on information in Challis (1987).

	Killed	Wounded	Missing	Captured	Surrendered
Security Forces	1,856	2,560	-	-	-
Civilians	2,473	1,385	810	-	-
Communist Terrorists	6,698	2,819	-	1,286	2,696

## 1. Rhetoric

The First Emergency saw the birth of the Printing Presses Ordinance (1948) which aimed “to exercise control over the ownership of printing and publication in the face of the increasing threats from the communists in Malaysia.”<sup>181</sup> Several subsequent laws were promulgated to control the communist threats using the media, including the ISA in 1960, which empowered the Home Minister “to impose preventive detention without trial on any person acting in the manner prejudicial to the security of Malaysia.”<sup>182</sup> The ISA also gave the police wide power to arrest without warrant and to detain any person for a maximum of 60 days.

As discussed in Chapter III, the enactment of the ISA caused suspicions among the Malaysian public since the Malaysian government during that time had already succeeded in its fight against the CPM. The opposition criticized the government’s action because they believed that Article 150 of the federal Constitution<sup>183</sup> was sufficient to protect the country from communist threats. Tunku, the first prime minister, justified the ISA before the Parliament, stating,

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<sup>181</sup> Zaharom Naim, “The Structure of the Media Industry: Implications for Democracy,” in *Democracy in Malaysia: Discourses and Practices*, eds. Francis Loh Kok Wah and Khoo Boo Teik, 111–139 (Surrey: Curzon Press, 1995), 123.

<sup>182</sup> Gordon Means, *Malaysian Politics: The Second Generation* (Oxford: Oxford University Press: 1991), 142.

<sup>183</sup> Article 150 of the Federal Constitution empowers Yang DiPertuan Agong (the King), on the Prime Minister’s advice, to issue a Proclamation of Emergency if he is satisfied that a grave emergency exists whereby the security, economic life or public order of Malaysia is threatened.

The ISA introduced in 1960 was designed and meant to be used solely against the communists . . . My Cabinet colleagues and I gave a solemn promise to Parliament and the nation that the immense powers given to the government under the ISA would never be used to stifle legitimate opposition and silence lawful dissent.<sup>184</sup>

Echoing Tunku's justification, Hussien Onn, the third prime minister, said, The ISA is a measure aimed at preventing the resurgence of the earlier communist threat to the nation. . . . During my term of office as Prime Minister; I made every effort to ensure that the pledges of my predecessors, that power under the ISA would not be misused to curb lawful political opposition and [that lawful political opposition and] democratic citizen activity were respected.<sup>185</sup>

In spite of these justifications, the government did use the ISA for purposes other than combating communism. The ISA was used against opposition party leaders who opposed the formation of Malaysia in 1963. It was used to arrest Indonesian supporters and sympathizers during the Confrontation of 1963 – 1966. In addition, according to Munro-Kua, prior to the 1964 national election, the ISA was used "to minimize the opposition electoral challenge."<sup>186</sup> These incidents demonstrated that the government had breached its own pledges.

In 1968, the CPM launched its second armed struggle against the government. That armed struggle was motivated by the North Vietnamese success in their armed struggle over South Vietnam. The CPM also had moral support from the People's Republic of China and Thailand. Domestic instabilities, including racial distrust between the Malay and the Chinese, the transition from the British to the newly-formed Malaysian Armed Forces in early 1960, and the

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<sup>184</sup> This statement was made in affidavits at the habeas corpus hearing of Chandra Muzaffar in 1987. Cited in Johan Saravanamuthu, "Report on Human Rights in Malaysia." Database on-line. Available at <http://www.aliran.com/hr/jsl.html>; accessed 26 April 2005.

<sup>185</sup> Ibid.

<sup>186</sup> Anne Munro-Kua, *Authoritarian Populism in Malaysia* (New York: St. Martin's Press, 1996), 52.

lack of monitoring on Malaysia's northern border also motivated the CPM to launch its second armed struggle. The government officially declared the Second Emergency on June 17, 1968; it has never been lifted.

In response to the Second Emergency, the government enhanced the measures that were taken during the First Emergency. In addition, Prime Minister Tun Abdul Razak visited China in 1974 to strengthen diplomatic relations. Malaysian security forces had joint border patrols and joint operations with Thai and Indonesian security forces. The government also introduced the Security and Development Concept (KESBAN), particularly for the rural areas, which involved the military with other government agencies. On December 2, 1989, an agreement ending the CPM struggle was signed between the CPM and the governments of Malaysia and Thailand.<sup>187</sup>

## **2. Reality**

The restrictions on fundamental rights have been justified by the perceived threat of the CPM. The 1948 Emergency Ordinance gave the authorities power to enact legislation that superseded existing laws and suspended existing civil and political liberties. Throughout the Second Emergency (1968–1989), repressive legislation was used to prevent subversion other than communism. Most of the legislation, and particularly the ISA, was used to suppress opposition party leaders, who were arrested and later accused of being communist sympathizers or of indirect involvement in communist activities. For example, in 1976, during factional tensions within the UMNO, six politicians were arrested.<sup>188</sup> The government said they were arrested

. . . because of their involvement in the activities of the Communist United Front or in activities which could be regarded as assisting the advancement of the Communist United Front, whether directly or indirectly, deliberately or unknowingly.<sup>189</sup>

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<sup>187</sup> Munro-Kua.

<sup>188</sup> The six politicians included two government ministers, three DAP MPs and the chairman of PSRM. See *Malaysia--Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy*, Amnesty International Report (September, 1999), 19. Database on-line. Available at <http://www.amnestyusa.org/countries/Malaysia/document.doc>; accessed 26 July 2005.

<sup>189</sup> Ibid., 20.

Similarly, in 1979, 22 members of the Airline Employees Union were detained under the ISA after “a pay raise dispute” at the government-run Malaysia Airline System (MAS). They were detained to prevent them from continuing acts deemed “prejudicial to the maintenance of an essential service.”<sup>190</sup>

Freedom of speech and expression were also curbed. For instance, in 1976, the managing editor of the *New Straits Times Press* (NSTP) and the news editor of *Berita Harian* were arrested under the ISA, accused “involvement in a communist subversion plot to weaken the belief in religion among Malays and convert them to communism.”<sup>191</sup> However, as discussed in Chapter III, many people over the years who were not involved in communist and subversive activities were detained. Interestingly, people involved in legitimate and democratic activities that threatened the government or individuals in power were also liable to be sanctioned under the ISA. Given these circumstances, Bridget Welsh rightly comments that “with the strong anti-communist orientation gained from its independence, the Malaysian government has consistently used the State to squash the political left.”<sup>192</sup> Thus, one might conclude that since its promulgation, the ISA has been abused by the government for its own political interests.

It is worth noting that anti-communist rhetoric has affected Malaysia's internal stability. The government succeeded in its crackdown on the communist movement in Malaysia and eliminated the communist threat. The CPM organization disintegrated, its morale crushed, but because the ISA was used to silence political dissidents, it created fear among the population.<sup>193</sup>

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<sup>190</sup> The six politicians included two government ministers, three DAP MPs and the chairman of PSRM. See *Malaysia--Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy*, Amnesty International Report (September, 1999), 21. Database on-line. Available at <http://www.amnestyusa.org/countries/Malaysia/document.doc>; accessed 26 July 2005.

<sup>191</sup> Ibid.

<sup>192</sup> Bridget Welsh, “Malaysia: Security Begins At Home” in *Asian Security Handbook: Terrorism and the New Security Environment*, 3<sup>rd</sup> edition, eds. William M. Carpenter and David G. Wiencek, 166–179 (Armonk: M. E. Sharpe, 2005), 172.

<sup>193</sup> Andaya and Andaya, 270–4.

## **B. THE RACIAL HARMONY RATIONALE**

Preserving racial harmony has been another rationale used to legitimize Malaysia's human rights restrictions. Since independence, the nation's ruling elites perceived that interethnic cooperation and mutual understanding among people was the main characteristic of the Malaysian political system.<sup>194</sup> This cooperation and mutual understanding worked well until 1969.

### **1. Rhetoric**

The 1969 race riot had a deep impact on the Malaysian political landscape. The underlying cause of this riot was the dissatisfaction between the races and unequal treatment of the Chinese and Indian minorities. From that point on, racial harmony was discussed and emphasized by the government.

In the aftermath of the riots, the ruling elites believed that interethnic cooperation in a multiethnic political coalition was a viable vehicle to racial harmony. The multiethnic coalition was deemed to provide protection for the rights of the three different communities. To make this perception real, after succeeding Tunku as Prime Minister, Razak changed the Alliance Party to a new, larger BN coalition. Instead of three major parties in the Alliance Party, the new National Front incorporated 14, including former opposition parties.<sup>195</sup> The aim of the coalition was to pursue national harmony and socio-economic development. It also tried to entrench racial cooperation under one party while at the same removing "the main element of 'Bargain 1957' from the arena of political debate."<sup>196</sup> In 1971, NEP was introduced to redress the underlying cause of the 1969 riot.<sup>197</sup> The main importance of NEP was to promote national unity by eradicating poverty, by raising income levels and employment opportunities for

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<sup>194</sup> Andaya and Andaya, 170.

<sup>195</sup> Andaya and Andaya, 325.

<sup>196</sup> Snodgrass, 56.

<sup>197</sup> The National Operations Council's (NOC) analysis attributed the major blame to three factors: Malay dissatisfaction over the non-implementation of long standing policies to make Malay the effective national language; non-Malay provocation of Malay sensitivities by challenging their privileged position under Article 153 of Federal Constitution; and urban and small town unemployment on the part of school leavers, both Malay and non-Malay. See Anthony Reid, *The Kuala Lumpur Riots and the Malaysian Political System*, (Australian Outlook, 1969), 275-6.

all races, and by restructuring Malay society and correcting its economic imbalances. In addition, new rules and regulations to prevent future violence were introduced. The federal Constitution and the Sedition Act were amended. The meaning of “sensitive issues” was expanded to include the position of the Malay rulers, the use of Malay as the national language, the “special position” of the Malays, the rights of non-Malay citizens to their citizenship and the status of Islam as the official religion.<sup>198</sup> Another outcome of the 1969 riot was the introduction of the Official Secrets Act (OSA), introduced to prohibit any person from getting information designated an “official secret” that might be used by the nation's enemies.

In October 1987, the Chinese expressed their dissatisfaction on various issues, especially Chinese education, Chinese language, the promotion of non-Mandarin-speaking ethnic Chinese teachers in Chinese schools and the NEP. The Malay retaliated and planned the biggest Malay rally in Kuala Lumpur to coincide with UMNO’s 41<sup>st</sup> anniversary. During this political crisis, the government used the “ethnic unrest” rationalization and launched Operasi Lalang which arrested hundreds of people, most of them related to the opposition party.<sup>199</sup> They were detained under the ISA, which allowed a two-year detention without trial; it was alleged that they promoted ethnic tensions. In reference to this “weeding operation,” Mahathir remarked, “We used the ISA to isolate those who had created racial tension. When they had realized what they had done, we released all of them.”<sup>200</sup>

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<sup>198</sup> The original meaning of “sensitive issues” included the position of the rulers, the status of Bahasa Malayu as the national language, and the special privileged of the indigenous population and the legitimate rights of other communities. See Simon Barraclough, “Political Participation and Its Regulation in Malaysia: Opposition to the Societies (Amendment) Act 1981,” *Pacific Affairs*, Vol. 57, No. 3 (Autumn 1984) 452.

<sup>199</sup> In this operation, 106 people were arrested and detained under the ISA. Among others detained in Operasi Lalang: Democratic Action Party’s member of parliament and state assemblyman, politicians from UMNO, GERAKAN, PAS and PRSM, second echelon MCA leaders, Chinese educationists, prominent NGO leaders and activists, local Muslim teachers, members of some Christian groups, local environmentalists and anti-logging natives. See Khoo Boo Teik, *Paradoxes of Mahathirism: An Intellectual Biography of Mahathir Mohamad* (Oxford: Oxford University Press, 1995), 284-5; see also John Hilley, *Malaysia: Mahathirism, Hegemony and the New Opposition* (London: Zed Book Ltd., 2001), 88-9.

<sup>200</sup> Mahathir, quoted in K. S Nathan, “Malaysia in 1989: Communists End Armed Struggle,” *Asian Survey*, Vol. XXX, No. 2, 210-220 (February 1990): 212.

## 2. Reality

The rhetoric of racial harmony was used by the government as a part of Malaysia's internal security agenda. The government believed that the national economy would grow stronger if all races worked together and lived in harmony, and put its efforts into promoting and preserving ethnic integration throughout the country. Any attempts to change the status quo were perceived by the government as undermining racial harmony; such challenges were not tolerated. These challenges, including criticism of the government, were often defined as threats to ethnic harmony. In order to rebuild confidence and encourage racial harmony, in 1971 the government amended the Sedition Ordinance of 1948. The amendment curbed freedom of speech and of the press by prohibiting public discussion of "sensitive issues." Any act, speech or publication that might hurt the feelings of other ethnic groups was prohibited under this amendment.<sup>201</sup> In other words, this amendment was simply intended to remove ethnic issues from political debate.<sup>202</sup> In an interview with the *Far Eastern Economic Review*, Mahathir stated that if the multicultural, multi-religious, multiracial, and multilingual differences were discussed openly, it might be dangerous to internal security.<sup>203</sup>

The government used its legal apparatus to maintain racial harmony. Operasi Lalang illustrates the government's willingness to use repressive laws against the opposition. Because the 1969 race riots left bitter memories, any ethnic contention remains tied up with this incident.

Despite government emphasis on racial harmony, ethnic violence occurred several times after 1969. First, an ethnic clash occurred on March 28, 1998 in Georgetown, Penang. This time, the clash was between minority Indian

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<sup>201</sup> Zaharom, 125.

<sup>202</sup> After this amendment, there were two instances in which two DAP members were charged under the Sedition Act. In the first instance, prior to the 1974 general election, Chan Kok Kit was charged with distributing seditious posters implying that the government did not support Chinese culture. In the second instance, Fan Yew Tang was charged with sedition for publishing a speech in a DAP magazine claiming the government favored Malays. See Crouch, *Government and Society in Malaysia*, 83.

<sup>203</sup> *Far Eastern Economic Review*, October 28, 1996, 18–27.

and majority Malay, because the former had built their temple illegally close to a mosque. In this incident, 185 people were detained and four injured. The incident spread statewide within a few days.

Similarly, on March 4, 2001, other clashes, again between Indians and Malay, occurred in Kampung Medan, a squatter district in Kuala Lumpur. The clashes began over a disagreement between two households regarding a funeral procession and a wedding party.<sup>204</sup> The Indians were preparing a funeral procession while the Malay celebrated a wedding. Suddenly, an Indian “drunken motorcyclist” kicked some chairs in a temporary shed on the road outside the wedding house, sparking the clash. Rumors of Malay-Indian clashes spread around the district and escalated to the point where armed gangs were roaming neighborhoods and slashing people. In these incidents, five of the dead were Indians, and one was an Indonesian construction worker mistaken for Malay.<sup>205</sup>

Ethnic tensions always existed in this plural society. No matter what the measures, and how they were implemented by the government, sometimes the conflict is inevitable. However, in an interview with *Perspective*, Hishamudin, the BN Youth Chief, denied that these clashes resulted from racial disharmony. He said,

There are housing problems, water problems, and amenities that are lacking that builds up causes of stress. These are things that build up to tension in that area. And sometimes as a result of that, you find that birds of a feather flock together when there is a problem of this nature. So the root cause of the problem is not

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<sup>204</sup> Augustine Anthuvan, “The Jalan Klang Lama Incident in Malaysia,” *Perspective* (13 March 2001) Database on-line. Available at [http://archive.rsi.com.sg/en/programmes/perspective/2001/03\\_13.htm](http://archive.rsi.com.sg/en/programmes/perspective/2001/03_13.htm); accessed 23 June 2005.

<sup>205</sup> For further explanations about Kampung Medan’s clashes, see “Police Promise Increased Patrols In Kg Medan Clash Areas,” 23 March 2001, *New Straits Times*, available at [http://www.nstpi.com.my/Current\\_News/NST/Thursday/Frontpage/20010322171146/Article](http://www.nstpi.com.my/Current_News/NST/Thursday/Frontpage/20010322171146/Article). See also “Malaysians Fear for Racial Harmony,” 22 March 2001, FEER, available at [http://www.feer.com/0103\\_22/p019region.html](http://www.feer.com/0103_22/p019region.html) and “Two Hurt In Malaysia Ethnic Attack,” CNN Asia available at <http://asia.cnn.com/2001/WORLD/asiapcf/southeast/03/21/malaysia.clashes.01/index.html>; accessed 25 February 2006.

racial disharmony, but more to do with social issues and infrastructural inadequacies, sharing of resources and so on that causes stress because of inadequate resources.<sup>206</sup>

In contrast, Earl Conteh-Morgan argues that there will always be tensions between minorities and the majority whenever inequalities and social problems exist, such as ethnic discrimination, inflation that aggravates racial tension, the lack of government response to demands for socio-economic reforms, and cleavages between the classes, religions or races.<sup>207</sup>

Ironically, the aftermath of the funeral-wedding conflict revealed the government's failure to redress social problems, inadequate infrastructure and resources, and poverty in that particular area. Ethnic tension did not develop overnight. It had existed for years. One should not look this incident in isolation, but rather through the lens of racial harmony. The racial issue in this incident should not be swept under the carpet. In short, the BN Youth Chief's denial, his claim that the incident was caused by social problems and infrastructural inadequacies, is implausible; it seems to fit into the general argument by Earl Conteh-Morgan.

Furthermore, racial harmony was used to promote Malay hegemony. As the major component in the BN coalition government, UMNO was projected as the guardian of Malay and *bumiputera* interests. This projection was important to UMNO for its legitimacy. The NEP gave the Malay supreme political power and economic privileges and these were incorporated into the state's policies. Even though the NEP was meant for all races in Malaysia, its main objective was to protect Malay hegemony. It had as its platform the pursuit of a political agenda rather than an economic agenda. In supporting this argument, Milne correctly comments that:

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<sup>206</sup> Anthuvan, "The Jalan Klang Lama Incident in Malaysia."

<sup>207</sup> Earl Conteh-Morgan, *Collective Political Violence: An Introduction to the Theories and Cases of Violent Conflicts* (London: Routledge, 2004), 2.

The NEP was political in its origin; its launching was prompted by desire to avoid a repetition of the political events of May 1969 . . . The implementation of the NEP, as determined by the government, is heavy with political implications. The unintended consequences of its implementation are less easy to discern, but are equally certain to affect the future shape of politics in Malaysia.<sup>208</sup>

While supporting Milne's comment, Welsh states that "ethnic harmony is based on the favored status of the Malay community."<sup>209</sup> Nevertheless, during the budget speech on Oct 1998, Mahathir denied the ethnic clash in March of that year, stating that "the success and impact in the distribution of wealth through the NEP is evident from the fact that racial riots have not occurred during the economic crisis. Malaysian of all races live peacefully and clearly have a sense of patriotism."<sup>210</sup>

The promotion of racial harmony has limited civil liberties. Freedom of speech and expression and freedom of assembly have been curtailed and these have led to the use of repressive legislation like the ISA to imprison political dissidents. While the Sedition Act is intended to proscribe "seditious" groups, the Printing Presses Publication Act (PPPA) is used to control the media. PPPA was introduced in 1984. It allows the Home Minister to grant or withdraw a printing license or publishing permit to any local and foreign press. If foreign journalists or publishers did not appear before the court to face charges of publishing material "prejudicial to the national security," their large deposit is forfeited. The Home Minister has the power to censor, to ban the offending publication, to reject the application or to revoke the permit for publishing, and his decision is final—no appeal is permitted. In other words, PPPA disallowed judicial review. For this reason, the Act has given too much discretionary power to the Home Minister, which has enhanced the power of the government to control the press.

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<sup>208</sup> Milne, 1976, 26.

<sup>209</sup> Welsh, 171.

<sup>210</sup> Budget speech by the Prime Minister at the House of Representatives, 21 October 1998.

As mentioned above, the OSA, introduced in 1972, prohibits publication or public dissemination of government information that might be critical to national security. It has been used to restrict journalists' reports; it imposes legal controls over investigative journalism and freedom of the press.<sup>211</sup> As a result, according to Zaharom, the OSA has “discouraged concerned and conscientious citizens from demanding their rights to information and subsequently cast doubts about the transparency of the government.”<sup>212</sup> Such doubts were raised in 2002 when the youth leader of Keadilan party, Ezam Mohd Noor, was charged and found guilty under the OSA of revealing the corrupt practices of two government ministers.<sup>213</sup>

There is no doubt that the government has used repressive laws to hamper opposition political participation. Free and open political debates have been impeded by the PPPA, the Sedition Act and the OSA. If political opinions are regarded as a threat to social peace and national security, speakers are punishable under the ISA, Sedition Act or OSA. Instead of preserving racial harmony and attaining political stability, the government used its legislation to strengthen its position and enhance the power of the executive.<sup>214</sup> As perceived by Mahathir, “only the government was able to determine, from information it received, what action was necessary to preserve the country’s stability and security.”<sup>215</sup>

### **C. THE “ASIAN VALUES” AND DEVELOPMENTALIST RATIONALE**

In 1993, all countries (including Malaysia) that attended the Vienna Human Rights Conference agreed to adopt the principle of universality and indivisibility:

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<sup>211</sup> Zaharom, 126.

<sup>212</sup> Ibid.

<sup>213</sup> *The Observatory Report, Malaysia*, “The Bao Constrictor”: Silencing Human Rights Defenders,” International Mission of Investigation, March 2003, 11.

<sup>214</sup> Means, 16.

<sup>215</sup> Mahathir, quoted in *Malaysia--Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy*, Amnesty International Report (September, 1999), 19. Database on-line. Available at <http://web.amnesty.org/library/Index/ENGASA280061999?open&of=ENG-MYS>; accessed 26 July 2005.

All human rights are universal, indivisible, interdependent and interrelated . . . While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states, regardless of their political, economic and cultural system, to promote and protect human rights and fundamental freedom.<sup>216</sup>

Nevertheless, some of the Asian countries have put limitations to their acceptance of the principle of universality, claiming that the development of the country should be given priority over the rights of individuals. The Asian countries, led by Singapore and Malaysia, challenged the Western claims of human rights abuses and thereby distanced Asian culture and political system from the West.<sup>217</sup>

### **1. Rhetoric**

At the core of the “Asian values” argument lies the assumption that Asian cultures have certain similarities, despite Asia’s many languages, religions, histories, political systems, prejudices and hatreds. “Asian values” emphasize the respect for hierarchy and authority, centrality and cohesion of the family, and social consensus, including avoidance of overt conflict in social relations. In addition, “Asian values” focus on “education and self discipline, acceptance of diversity of spiritual and philosophical authority in theory, but at the same time, enforced social consensus among such diversity in practice.”<sup>218</sup> To the “Asian values” advocates, the community should be given priority over individuals. The government should focus on developing the country and ensuring that the economy grows so that the population can receive the benefits of development.

On the other hand, “Western standards” focus on universality and individualism. To the Westerners, everyone has the same rights and all are equal in the light of international human rights. People have been provided room to

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<sup>216</sup> Mahathir.

<sup>217</sup> Indonesia and China later joined Singapore and Malaysia in advocating “Asian values”. However, the Indonesian voices were not strong because they were involved in human rights violations in East Timor. Meanwhile, the Chinese promoted “Asian values” based on their understanding of Confucian philosophy.

<sup>218</sup> Errol P. Mendes, “Asian Values and Human Rights: Letting the Tigers Free,” Human Rights Research and Education Centre, Ottawa, Canada, available at [http://www.cdp.hrc.uottawa.ca/publicat/asian\\_values.html](http://www.cdp.hrc.uottawa.ca/publicat/asian_values.html); accessed 1 November 2005.

express themselves and their grievances, freedom of association, protection from arbitrary political imprisonment, and freedom from restrictions on democratic processes.<sup>219</sup> Advocates for this view argue that human rights should protect the population from the state's tyranny. To them, the "Asian values" rationale is used to legitimize authoritarian regimes. Syed Hamid, Malaysia's Foreign Minister, says, "The western theory of human rights is deeply influenced by market capitalism, political liberalism and individualism."<sup>220</sup> It gives top priority to civil and political rights, but there is insufficient recognition of the need for socioeconomic entitlements.

The "Asian values" and the "Western standards" debate is perhaps best summarized by Tang's article *A Clash of Values? Human Rights in the Post-Cold War World* <sup>221</sup> Tang asserts that the debate on human rights between the West and the East is between two approaches: the post colonial approach, and the neo colonial approach.<sup>222</sup> He explains that the former developed from the liberal tradition, which emphasizes the interdependence of states and the triumph of the liberal democracies over authoritarianism. He writes,

The western approach to human rights, which places more importance on civil and political rights and the universality of human rights on the basis of the liberal tradition, is usually associated with the post colonial approach.<sup>223</sup>

Meanwhile, the neo-colonial approach "sees a continuation from the colonial era to the present," with the West exploiting the developing countries and creating a new world order.<sup>224</sup> In sum, the post colonial approach was associated

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<sup>219</sup> Aryeh Neier, "Asian Values vs. Human Rights," Database on-line. Available from the Forum of Democratic Leaders in the Asia Pacific (FDL – AP Archives), <http://www.nancho.net/fldap/fdessay2.htm>; accessed 24 October 2005.

<sup>220</sup> Dato' Syed Hamid Albar, "Rights with Responsibility," *Journal of Diplomacy and Foreign Relations*, Vol. 2, No. 2 (December 2000): 3.

<sup>221</sup> James T. H. Tang, "A Clash of Values? Human Rights in the Post Cold War World," in *"Asian Values" and Democracy: Proceedings of a Conference held at Hamamatsu, Shizouka, Japan*, 28 March 1997. Database on-line. Available from <http://www.unu.edu/unupress/asian-values.html>; accessed 3 November 2005.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

with the “Western standard” of human rights with its emphasis on individualism, while the neo-colonial approach was identified with “Asian values” which stress the importance of economic and social rights (including cultural differences).

The Asian countries argue that “universal conceptions of human rights are incompatible with the ‘Asian values.’”<sup>225</sup> Their presumption is that the UDHR and related covenants on civil political rights (ICCPR) and economic, social and culture rights (ICESCR) are of Western origin and thus emphasize individuality. To them, those human rights revolutions resulted from the Western enthusiasm for liberal philosophy but at the same time reveal Western international hegemony.<sup>226</sup> As Donnelly puts it, internationally recognized human rights “set out as a hegemonic political model something much like the liberal democratic welfare of Western Europe.”<sup>227</sup> These “Western standards” were also deemed a sort of capitalist imperialism. In fact, the West tries to impose its human rights values on the developing countries. The Western countries examine the human rights standards of specific countries prior to giving aid or doing business. For example, the U.S State Department will brief the Congress about the human rights standards of countries around the world.<sup>228</sup> The pressure that the Western countries put on Asian countries over human rights has been also construed as “an attempt to undermine their political position and thus, a threat to regime survival.”<sup>229</sup> By imposing the “West’s standards” on developing countries, they were deemed intrusions on national sovereignty. Mahathir has this to say about the West's accusations of improper human rights practice in Malaysia:

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<sup>225</sup> Tang.

<sup>226</sup> David Little, “The Universality of Human Rights,” Religion and Peacemaking, United States Institute of Peace, available at <http://www.usip.org/religionpeace/rehr/universality.html>; accessed 21 June 2005.

<sup>227</sup> Jack Donnelly, “The Social Construction of International Human Rights,” in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J Wheeler (Cambridge: Cambridge University Press, 1999): 88.

<sup>228</sup> Charles R. Beitz, “Human Rights as a Common Concern,” *American Political Science Review*, Vol. 95, No. 2 (June 2001): 269.

<sup>229</sup> Tang, 4.

[I]t is with regard to freedom from oppression and brutality that Western hypocrisy is at its worst. Western governments, their media and their NGOs, are tireless in their condemnation of non-Western countries for their human rights records. They threaten sanctions, withdrawal of aid, stoppage of loans, economic and trade union boycotts and actual military strikes against those they accused of violating human rights. They even kidnap people in other countries in order to try them in their courts under their laws if they see fit to do so. They have no respect for independence or territorial integrity in their zeal to uphold their human rights principle.<sup>230</sup>

Mahathir also argued that the ISA was necessary to keep the nation stable and therefore enable the government to concentrate on the nation's development and economic growth.

According to Neier, the fundamental issues in this debate are the denial of the freedom of expression and association, arbitrary political imprisonment, cruelty to detainees and restrictions on democratic processes.<sup>231</sup> In sum, the "Asian values" debate comprises three questions, namely (1) the question of cultural relativism against universalism, (2) individual rights as opposed to communitarianism (rights versus duties and obligations), and (3) the primacy of economic development over civil and political rights.<sup>232</sup> No consensus has been reached on these issues.

Developmentalism is "the cultural consequence of the *dirigiste* developmentalist state, when citizens begin to enjoy improved living conditions as a result of the economic growth the state has brought about."<sup>233</sup> This rationale was increasingly used in the mid-1990s to replace the racial harmony discourse. It is not surprising that developmental rhetoric was used during that time,

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<sup>230</sup> Mahathir Mohamad at the International Conference on Human Resources Development within the Framework of International Partnership "North-South Relations: Problems and Prospects on 16 September 1994. (Malaysia: 1999). Compiled by the World Youth Foundation, Malacca, Malaysia.

<sup>231</sup> Neier, 2.

<sup>232</sup> Herman Joseph S. Kraft, "Human Rights, ASEAN and Constructivism: Revisiting the "Asian Values" Discourse," *Philippine Political Science Journal*, Vol. 22, No. 45 (2001): 35 – 54.

<sup>233</sup> Francis Loh Kok Wah, "Developmentalism and the Limits of Democracy Discourse," in *Democracy in Malaysia: Discourses and Practices*, ed. Francis Loh Kok Wah and Khoo Boo Teik (Surrey: Curzon Press, 2002) 21.

because Malaysian government policy has always emphasized implementation of the principle of the right to development.<sup>234</sup> The central subjects and participants of development are the country's population. The people acknowledge their roles and responsibility in development. They also recognize the state's responsibility to create national and international conditions favorable for the realization of development.<sup>235</sup>

## **2. Reality**

The subscription to "Asian values," first, is one way to legitimize an authoritarian regime. Malaysia, always under the spotlight of many Western countries and international NGOs, has been criticized for its authoritarian regime. Thus it is not surprising that the Malaysian government has to find another rationale for its regime's legitimization. In the name of economic growth and development, the government used "Asian values" discourse to gain support from the population, and especially the middle classes. That support was gained under the pretext of national identity and nation building. Whoever advocates democracy will be seen as "anti-government." As Mahathir put it, "let us not be slaves to democracy . . . if by practicing certain aspects of democracy we run the risk of causing chaos in our party and country, we have to choose our party and country above democracy."<sup>236</sup>

Second, "Asian values" is used as a rationale to maintain ethnic stability. In order to achieve that stability, the government used emergency laws without restraint. These repressive ("draconian") laws were used arbitrarily and suppressed the rights of the population. In that sense, the Malaysian government has regulated many aspects of life which Westerners perceive as inappropriate.<sup>237</sup> Emergency laws like the ISA, the OSA and the PPPA were

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<sup>234</sup> Dato' Seri Hamid Albar, "Rights with Responsibility," 8.

<sup>235</sup> Dato' Seri Hamid Albar, "The Malaysian Human Rights Commission: Aim and Objectives," Keynote Address at Bar Council Convention on Human Rights, Kuala Lumpur, 28 October 1999, 2.

<sup>236</sup> "Mahathir Cautions against Being Slaves of Democracy," *Business Times* (Singapore, 31 May 1993). Database on-line. Available at <http://business-times.asia1.com.sg/sub/news.html>; accessed 12 June 2005.

<sup>237</sup> Langlois, 13.

used to preserve racial harmony and national security but also to silence political opponents, activists and whoever had an ideology different from the government ideology. To the government, the ISA made the street safe. In fact, the ISA was complemented by other laws, already discussed, and was used to deter an effective challenge to the government. People are willing to surrender their civil and political liberties as the price of internal stability.

#### **D. THE TERRORISM RATIONALE**

The Sept 11, 2001 terrorist attacks in New York and Washington, D.C. caught the world by surprise. After the attacks, the U.S government launched the global war on terror (GWOT) initiative. From that point on, many countries enacted their own anti-terrorist laws, some of which are similar to the ISA and have also encroached on or violated individual rights. For example, in 2001 the U.S. enacted the USA PATRIOT Act<sup>238</sup> and the U.K. enacted the Anti-Terrorism, Crime and Security Act; the following year, Canada passed the Anti-Terrorism Act, and India, the Prevention of Terrorism Act.<sup>239</sup>

##### **1. Rhetoric**

Prior to the September 11 incidents, a few Western countries criticized Malaysia for its poor human rights standards and criticized the ISA and other repressive laws.<sup>240</sup> These laws were regarded as unconstitutional and were said to violate fundamental rights. Not only have the Western countries urged Malaysia to adhere to liberal democracy and the universality of human rights, but the West has also threatened to use sanctions against the Malaysian economy.

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<sup>238</sup> USA PATRIOT is an acronym for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism."

<sup>239</sup> SUHAKAM, *Review of the Internal Security Act 1960*, Kuala Lumpur 2003, 7. See also Wu Min Aun, "Sacrificing Personal Freedom in the Name of National Security," 4th Professor Ahmad Ibrahim Memorial Lecture delivered at Renaissance Hotel, Kuala Lumpur on 12 July 2003, sponsored by International Islamic University, Malaysia. Database on-line. Available at <http://www.cdu.edu.au/lba/law/staff/wu/wu1.htm>; accessed 14 October 2005.

<sup>240</sup> For example, the U.S. and the European Union criticize Malaysia's human rights practices, especially during Anwar's crisis. As mentioned elsewhere in this chapter, the U.S. State Department briefs Congress about the human rights standards of a country prior approval of aid or doing business. See Beitz, 269.

The government has been pressured by domestic NGOs, as well as the people of Malaysia, to change its human rights practices. After Anwar's trial, the image and reputation of the government was tarnished.

The September 11 incident was a windfall for the government in Malaysia, especially when Mahathir's popularity and reputation were sliding downhill. Neither in Malaysia nor in the international arena was he popular. Because of the handling of Anwar's case and Mahathir's criticisms of the West, the relationship between Malaysia and Western countries, and particularly the United States, became severely strained. But since September 11, 2001, Malaysia and the U.S. have been close friends. Malaysia strongly supports the U.S. efforts against terrorism and extremism.<sup>241</sup> In fact, "the U.S. and Malaysia are planning to open a joint anti-terrorism training center to instruct Southeast Asian security services on how to combat extremist violence."<sup>242</sup> Malaysia became the U.S.'s new ally in supporting the GWOT after the two countries signed an anti-terrorism pact in May 2002.<sup>243</sup> Malaysia's engagement with the major power is an attempt "to ensure national, regional and global security."<sup>244</sup> Interestingly, the Western countries that had previously criticized Malaysia on its poor human rights record have been silent on the extensive use of the ISA. Hassan and Lopez characterize this engagement as showing how "political alliances move and shift along with the changing political panorama and shared national interests."<sup>245</sup>

## **2. Reality**

Since the September 11 attack, Mahathir discovered another justification for "manipulating the ethno-religious polarization in Malaysia to the liking of the government."<sup>246</sup> For the sake of national security, the people surrender their

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<sup>241</sup> Hassan and Lopez, 132.

<sup>242</sup> The suggestion to establish a joint anti-terrorism training center was announced by U.S. Secretary of State Colin Powell during his 2001 visit to Malaysia. This training center has been established in Kuala Lumpur. Powell's announcement can be found in *Malaysiakini*, 31 July 2002 available at <http://www.malaysia.net/aliran/index.html>; accessed 31 December 2005.

<sup>243</sup> This "Anti-Terrorism" pact was signed in May 2002 when Mahathir visited the White House.

<sup>244</sup> Hassan and Lopez, 133.

<sup>245</sup> Ibid.

<sup>246</sup> Thompson, 1086.

liberties.<sup>247</sup> In gaining the people's support, the most effective government tactic has been to claim that PAS is linked to the Al-Qaeda network. This has put PAS on the defensive while raising the image of the UMNO as a moderate Islamic party. The *Observatory* rightly commented that "the Dr. Mahathir government has skillfully instrumentalized the 'fight against terrorism' to consolidate its efforts to curtail political opposition (particularly PAS)."<sup>248</sup>

The rise of extremist Islamic groups in Malaysia worried the government greatly because the government wanted to maintain its reputation and image as a supporter of moderate Islam. The government cracked down on several Islamic groups that it believed was practicing in ways that violated Islamic norms. In 1996 and 1997, the government arrested several Muslim men for their involvement with Al-Arqam movement<sup>249</sup> and for practicing Shia Islam (a form of Islam different from the dominant practice in Malaysia). They were alleged to have participated in activities prejudicial to national and Muslim unity. In 2000, the government arrested fifteen members of Al-Maunnah<sup>250</sup> for stealing an assortment of small arms and support weapons from an army camp.

Similarly, in April 2001, the government used the ISA to arrest and detain without trial nearly thirty reformists and political activists from opposition political parties and NGO activists who had criticized the government. All were accused of being involved in illegal activities to topple the Malaysian government. In

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<sup>247</sup> Wu Min Aun, 5.

<sup>248</sup> The Observatory Report, 6.

<sup>249</sup> Al-Arqam was established in 1968 by a group of Muslims led by Ustaz Ashaari Muhammad. Al-Arqam adopted a bottom up approach, stating that a true Islamic community must be established prior to the establishment of an Islamic state. However, Ustaz Ashaari's teaching was perceived as "deviant" and Al-Arqam's publication *Aurat Muhamadiyah* was banned. Subsequently, National Fatwa Council declared that Al-Arqam had deviated from the true teaching of Islam. See Saliha Hassan, "Political Non Governmental Organizations: Ideals and Realities," in *Democracy in Malaysia: Discourses and Practices*, ed. Francis Loh Kok Wah and Khoo Boo Teik, 198 – 215 (Surrey: Curzon Press, 2002) 206 – 7.

<sup>250</sup> Al-Ma'unah (Brotherhood of Inner Power) is a NGO involved in the teaching of martial arts, particularly the development of one's inner powers and the practice of Islamic traditional medicine. It is said to have more than 1,000 members in Malaysia and overseas, including professionals and ordinary people. However, in 2000, this group, led by an ex-soldier, was said to be attempting to propagate an Islamic state. In so doing, the group stole an assortment of small arms and support weapons from an army camp in Grik, Perak.

August 2001, ten members of the Kumpulan Mujahidin Malaysia<sup>251</sup> (KMM) were arrested and detained by the Malaysian police under the ISA. These groups were alleged to be responsible for a range of crimes, including local bank robberies, assassination of a state assemblyman, and bombing of churches and Hindu temples.<sup>252</sup> Apart from these criminal activities, KMM was also accused of attempting to overthrow the government and establish an Islamic state coinciding with the agenda of a Pan Islamic State in Southeast Asia comprised of Malaysia, Indonesia, Brunei, southern Thailand and the southern Philippines.<sup>253</sup> The government also linked the KMM with the Jemaah Islamiah (JI) organization, which has cells in various Southeast Asian countries. The Malaysian government considered the challenges posed by the Islamic militants to be the greatest internal security threat and the government was clearly alarmed at the scope of KMM and JI network within its territory.<sup>254</sup>

The September 11, 2001 incident was also a saving grace for Mahathir, who used the “war against terrorism” to consolidate his position and restore his tarnished reputation. At the same time, the terrorism rhetoric enabled Mahathir to win back some of the Malay electorate from PAS. Internationally, he supported the U.S. effort to fight the GWOT in order to improve ties between Malaysia and

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<sup>251</sup> According to the international report, the Kumpulan Mujahidin Malaysia (KMM or Malaysian Warriors’ Group) is reported to favor the overthrow of the Mahathir’s government (in 1999 and 2000) and the creation of a regional Islamic state. Their activities have been said to be deemed threatening to the country’s security, including planning for warfare, possession of weaponry, etc. <http://www.terrorism.com>; accessed 2 June 2005.

<sup>252</sup> Manisah Ismail, “Nik Adli Stays Detained after Habeas Corpus Application Rejected,” *New Straits Times*, October 4, 2001 and Simon Elegant, “Just What Dr. Mahathir Ordered: The War against Terror Yields Unexpected Benefits for the Malaysian PM – at Home and Abroad,” *Time Asia*, October 22, 2001, available at <http://www.times.com/time/asia/news/printout/0,9788,180570,00.html>; accessed 25 May 2005.

<sup>253</sup> Muthiah Alagappa, “Introduction” in *Asian Security Order – Instrumental and Normative Features*, ed. Muthiah Alagappa, 1–30 (Stanford: Stanford University Press, 2003), 12.

<sup>254</sup> Zachary Abuza, “The War on Terrorism in Southeast Asia,” in *Strategic Asia 2003–04: Fragility and Crisis*, ed. Richard J. Ellings and Aaron L. Friedberg with Michael Wills, 321 – 363 (September 2003), 347. Database on-line. Available at [http://www.nbr.org/publications/strategic\\_asia/pdf/sa03\\_14terrorism.pdf](http://www.nbr.org/publications/strategic_asia/pdf/sa03_14terrorism.pdf); accessed 26 July 2005.

the U.S. as well as to increase Malaysia's status in the Organization of Islamic Conference (OIC).<sup>255</sup> In general, September 11 strengthened Mahathir's stature around the world.<sup>256</sup>

Anti-terrorist rhetoric has been used to retain the ISA. The terrorist threat encouraged the government to continue to use the ISA. Furthermore, within Southeast Asia, various violent incidents occurred, such as the bombings in Bali and at the JW Marriot Hotel and the Australian Embassy in Jakarta. To prevent similar incidents from happening in Malaysia, the government has taken concrete action.

Despite all the evidence against the "suspected terrorists," the government has concentrated its spotlight and harassment on political dissidents, detained under the ISA, who were alleged to want the overthrow the government.<sup>257</sup> If in the 1950s and 1960s, the government had used the ISA to arrest people who were pro-communist, now they are detaining people without trial on allegations of being involved in the militant Islamic movement.<sup>258</sup> The crackdowns against terrorists and their supporters have been extensive. Suspicions have arisen that the crackdowns have been directed at the opposition politicians who demand greater democracy from the government. The opposition parties charge the government with using terrorism as an excuse to get rid of political opponents. This argument is supported by SUARAM, a local NGO, which claimed that the government was "using the fight against terrorism as a 'pretext' for abusing human rights."<sup>259</sup> Foreign Minister Syed Hamid responded, saying,

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<sup>255</sup> Abuza, 346.

<sup>256</sup> The Observatory Report, 6.

<sup>257</sup> Human Rights Watch, "In the Name of Security: Counterterrorism and Human Rights Abuses under Malaysia's Internal Security Act," Vol. 16. No. 7 (May 2004): 6 and Amnesty International Report, "Malaysia – Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy," Amnesty International (September 1999). Database on-line. Available at [http://web.amnesty.org/aidoc/aidoc.pdf.nsf/Index/ASA280061999ENGLSH/\\$File/ASA2800699.pdf](http://web.amnesty.org/aidoc/aidoc.pdf.nsf/Index/ASA280061999ENGLSH/$File/ASA2800699.pdf); accessed 21 June 2005.

<sup>258</sup> Sinapan Samydarai, "9/11 Anti Terrorist Measures and Their Impact on Human Rights in Asia," in *September 11 and Political Freedom – Asian Perspective*, eds. Uwe Johannsen, Alan Smith and James Gomez, 216 – 240 (Select Publishing, 2001), 231.

<sup>259</sup> Malaysiakini, 26 July 2002, <http://www.malaysiakini.com>; accessed 21 June 2005.

We have never used the ISA for the purpose of frustrating our political opponents, but that it is used for the purpose ensuring that peace and prosperity of the country is protected. If anybody takes action which will jeopardize our security, then we will take action.<sup>260</sup>

To date, several hundred people who were “suspected terrorists” or directly or indirectly linked to terrorist organizations have been detained without trial under the ISA (Table 6 and Table 7).<sup>261</sup>

## **E. CONCLUSION**

This chapter has examined the justification for Malaysia’s human rights restrictions. In this context, the government has put priority on several objectives: social and economic development, political stability and internal security.<sup>262</sup> Political stability and guaranteed internal security were seen as important for economic development. To ensure internal stability, the government used various means, including repressive legislation. These legislative measures were introduced on the initiative of political leaders intending to strengthen their political positions.<sup>263</sup> It is not surprising that the political leaders have used this legislation to deal with specific challenges to their authority.

From 1960 to 1980, the ISA was widely used to counter the threat posed by the CPM and communist sympathizers within the country. However, during this period, there was extensive use of the ISA for purposes outside of combating communism. Whoever seemed “prejudicial to the national economy and security” would be arrested, including politicians, opposition party leaders, members of trade unions, university lecturers and students, and journalists.<sup>264</sup> Rais Yatim stated in the *Sunday Star* on December 6, 1994, “the ISA original aim was

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<sup>260</sup> Syed Hamid Albar, quoted in Kevin Tan, “Powell: US Still Believes Anwar Trial is Flawed,” *Malaysiakini*, 30 July 2002. Available at <http://www.malaysiakini.com>; accessed 21 June 2005.

<sup>261</sup> See Human Rights Watch, *In the Name of Security*, and Amnesty International, *Malaysia: Human Rights Undermined*, and Fritz and Flaherty, 1355 – 1368.

<sup>262</sup> The impact of rhetoric and the reality of rationalization on the internal security will be more extensively discussed in Chapter V.

<sup>263</sup> Harold Crouch, “Malaysia: Neither Authoritarian nor Democracy,” in *Southeast Asia in the 1990s: Authoritarianism, Democracy and Capitalism*, eds. Kevin Hewinson, Richard Robinson and Garry Rodan, 135 -157, (Sydney: Allen and Unwin, 1993), 153.

<sup>264</sup> Amnesty International, *Malaysia: Human Rights Undermined*, 20 – 21.

dealing with communism and controlling terrorism, but now the former is not a threat anymore.”<sup>265</sup> Despite the end of the communist insurgency, the ISA has been used continually and widely.

Later, when the government used the racial harmony rationale, the ISA was again used as an effective tool to crush communal or racial riots. The introduction of PPPA, the OSA and the amendment to the Sedition Act further silenced the voices of criticism from opposition parties and local NGOs. These legislative measures obviously curbed the civil and political liberties of Malaysia’s citizens.

“Using the discourse of “Asian values” or security in response to a potential terrorist threat, the government’s prioritization of economic development above civil and political rights serves to justify the existing repressive laws used to ensure stability by stifling competing views or criticism. The “Asian values” discourse and other narratives used by the state play an important role in enhancing social control and ensuring state power.”<sup>266</sup> Recently, anti-terrorism rhetoric has been used widely and has been accepted by the people, who are willing to compromise their civil and political rights for the sake of national security. Public acceptance provides a blanket approval to the government’s actions against suspected terrorists.

In conclusion, it is clear that in Malaysia, the rationalizations for government control have changed over time. These changes in rationalizations were inspired by changing situations. So, for example, anti-communist rhetoric is no longer suitable since the communists have surrendered and the Cold War has ended. To date, the racial harmony and anti-terrorism rationales are arguably the most relevant justifications for repression. These rationales are based on the notion that ethnic tension has always existed and the global war on terror is ongoing. The bottom line purpose of these rationalizations is to weaken the opposition and eliminate criticism of the government. Whatever reasons or

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<sup>265</sup> Rais Yatim, cited in R.S. Milne and Diane K. Mauzy, *Malaysia Politics Under Mahathir* (London: Routledge, 1999), 110.

<sup>266</sup> Hassan and Lopez, 116.

justifications the government may give, its actions have been based on political motives like increasing the strength of government insiders, and especially UMNO and its president.

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## **V. RHETORIC AND REALITY OF HUMAN RIGHTS AND INTERNAL SECURITY**

Terrorists believe that anything goes in the name of their cause. The fight against terror must not buy into that logic. Human rights principles must not be compromised in the name of any cause.<sup>267</sup>

Kenneth Roth  
Executive Director, Human Rights Watch

This chapter focuses on how the rhetoric and reality of civil and political rights affect internal security in Malaysia. It argues that if the government commitment to civil and political rights were merely rhetorical, internal security would be undermined. But if the government were to improve civil and political rights, it could help to improve internal and political stability, and the government itself would become more transparent and effective. Accordingly, this chapter discusses two questions: How do civil and political rights affect internal security? and, How far can civil and political rights be abridged for the sake of protecting the state's internal security? To answer these questions, this chapter discusses the internal security threats in Malaysia, the adverse effect of restrictions on civil and political rights, and the potential positive effects of improving civil and political rights.

### **A. THE INTERNAL SECURITY THREATS**

After the First Emergency ended in 1960, the government introduced and passed the ISA "to provide for the internal security of the Federation, preventive detention, the prevention of subversion, the suppression of organized violence against persons and property in specified areas of the Federation and for matters incidental thereto" in the Parliament.<sup>268</sup> The ISA conferred extensive powers on

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<sup>267</sup> Kenneth Roth, "Anti-Terror Campaign Cloaking Human Rights Abuse - New Global Survey Finds Crackdown on Civil Liberties," *Human Rights News*, Washington, 16 January 2002. Database on-line. Available at <http://hrw.org/english/docs/2002/01/16/global3690.htm>; accessed 19 February 2006.

<sup>268</sup> Tun Mohamed Dzaiddin Abdullah, "National Security Considerations under the Internal Security Act 1960--Recent Developments," First presented at a conference on "Constitutionalism, Human Rights and Good Governance" at Kuala Lumpur on 30 September to 1 October 2003. Available at <http://www.mlj.com.my/free/articles/dzaiddin.htm>; accessed 8 March 2006.

the executive to stop and prevent any actions, threatened or actual, which might be prejudicial to the security of Malaysia;<sup>269</sup> the ISA was widely used to ensure peace.

The expression “internal security” is often used but seldom legally defined. In fact, the term “internal security” is not defined in the ISA. Nevertheless, in general, internal security means “the population is free from major threats to their safety and . . . the government is able to build stable political, economic and other key governance institutions.”<sup>270</sup> In short, internal security deals with domestic political, economic, social or military matters which might affect the safety of the whole society.

Another consideration which is related closely to internal security is the rule of law. Rule of law is to ensure the populations’ safety by protecting people from arbitrary use of power by public officials and allowing them to plan their affairs with confidence.<sup>271</sup> Given the purpose of this thesis, both these factors will be considered.

Malaysian policymakers have been concerned about internal security since independence. For the policymakers, security begins at home.<sup>272</sup> Failure to ensure the security of the nation, especially from internal threats, would result in the collapse of the state. From the 1960s to the 1980s, the internal security threats to Malaysia’s stability and security have taken many forms, including the communist insurrection, ethnicity and religion. Except when dealing with the communist insurrection, the government has generally responded to internal threats using legal mechanisms (such as the ISA, the Sedition Act, the OSA and the judiciary) rather than security forces.

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<sup>269</sup> Abdullah.

<sup>270</sup> Seth J. Jones et al., *Establishing Law and Order after Conflict*, (Santa Monica: RAND Corporation, 2005). Database on-line. Available at [http://www.rand.org/pubs/monographs/2005/RAND\\_MG374.sum.pdf](http://www.rand.org/pubs/monographs/2005/RAND_MG374.sum.pdf); accessed 12 January 2006.

<sup>271</sup> Ibid.

<sup>272</sup> Hans H. Indorf, “Malaysia 1979: A Preoccupation with Security,” *Asian Survey*, Vol. 20, No. 2, A Survey of Asia in 1979: Part II. (February 1980): 142.

## 1. Communist Insurrection

As discussed in Chapters II and IV, the communist insurrection began in 1948 when the CPM declared its objective of seizing political power through armed struggle. As a result, a state of emergency was declared by the government and communism became a threat to internal security. The government took various actions to encounter communist threats, including the use of the legal apparatus and armed actions by the security forces. By the end of 1960, the government had successfully stopped the communist insurrection. However, in 1968, the CPM began a second offensive against the government. This time, the government used security forces, including the military and the police, to combat the communist terrorists, along with legal mechanisms such as the ISA. Finally, in 1989, the communist armed struggle ended with the signing of a peace agreement between the CPM and Malaysia's government.

## 2. Ethnicity

In a multiethnic society, a major task of the government is to integrate the population. According to Lauder and Mansor, population integration is seen as a *sine qua non* for nation building.<sup>273</sup> Also, as Camroux points out, "Ethnicity continues to play an essential role in the constant process of giving meaning to the concept of a Malaysian nation."<sup>274</sup> Nevertheless, ethnic tension was always a problem in this pluralistic society. Mahathir admitted this problem, commenting in an interview with *Asian Affairs*, "In a pluri-ethnic society, if you have the social division amplifying the racial division, then you have trouble ahead."<sup>275</sup> The 1969 race riot illustrated the danger of ethnic tensions which have ever since been seen as threats to internal security.

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<sup>273</sup> Kathleen Lauder and Norma Mansor, "Effective States and Engaged Societies: Capacity Development for Growth, Source Delivery, Empowerment and Security in Africa – A Country Study Used for Comparative Purposes: The Case of Malaysia," Draft Report (June 3, 2005), 9. Database on-line. Available at [http://siteresources.worldbank.org/AFRICAEXT/Resources/CD\\_Malaysia\\_June.pdf](http://siteresources.worldbank.org/AFRICAEXT/Resources/CD_Malaysia_June.pdf); accessed 6 March 2006.

<sup>274</sup> David Camroux, "States Responses to Islamic Resurgence in Malaysia: Accommodation, Co-Option, and Confrontation," *Asian Survey*, Vol. 36, No. 9. (September 1996): 853.

<sup>275</sup> Serge Berthier, "Interview with Dr. Mahathir – The Making of a Country," (Spring 1998). Database on-line. Available at [http://www.asian\\_affairs.com/Malaysia/Mahathir.html](http://www.asian_affairs.com/Malaysia/Mahathir.html); accessed 29 December 2005.

**a. Racial Harmony**

The race riot awoke Malaysia to the importance of racial harmony. The government stressed that racial harmony must be maintained at all costs as the only platform to guarantee ethnic security and some autonomous rights.<sup>276</sup> Any attempt to promote ethnic tension and disrupt racial harmony resulted in arrests under the ISA, which allowed for detention without trial.<sup>277</sup> The government also perceived criticism against it as a threat to racial security and therefore took action against its critics. For example, during Operation Lalang in 1987, to prevent the outbreak of future race riots, hundreds of people were arrested for promoting ethnic tensions.

**b. The Malay Hegemony**

Malays, as the majority community in Malaysia, are the most politically powerful ethnic group.<sup>278</sup> As Mauzy and Milne observe, “the Malays emerged in the early 1970s, after Emergency rule following the May 1969 riots, in a stronger, virtually hegemonic, political position.”<sup>279</sup> The BN was dominated by the UMNO; this organization should have been looking after the interests of the Malays. The three organs of government (executive, legislature, and judiciary) are dominated by Malays. The military, police and civil service are dominated by the Malay, too. This domination “has given confidence to the Malays, and a sense of legitimacy to their demands that the country should solidly reflect a Malay character and identity.”<sup>280</sup> Thus, it has been important for the government to protect Malay hegemony. In fact, the government needs continuous support from the Malay in order to implement its policies. Besides getting support, the government must also protect Malay hegemony. For the military, as long as

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<sup>276</sup> Welsh, 170.

<sup>277</sup> As discussed in previous chapters, in addition to the ISA, the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Dangerous Drug Act (Special Preventive Measures) Act 1985 also allowed for detention without trial. These laws empowered the Minister to detain a person indefinitely using a series of renewable two-year detention orders. See Amnesty International Report, “*Human Rights Undermined – Restrictive Laws in Parliamentary Democracy*,” 32 – 33.

<sup>278</sup> Welsh, 171.

<sup>279</sup> Diane K. Mauzy and R. S. Milne, “The Mahathir Administration in Malaysia: Discipline through Islam,” *Pacific Affairs*, Vol. 56, No. 4 (Winter 1983 – 1984); 632.

<sup>280</sup> *Ibid.*, 632.

Malay interests are protected, as well as the interests of other ethnic groups, the principle of civilian supremacy will be respected. But if the two Malay parties (UMNO and PAS) could not protect Malay interests, “the prospect of military intervention in support of maintaining Malay supremacy cannot be ruled out.”<sup>281</sup>

The Anwar crisis has broken down Malay cohesiveness; the Malay community has been fragmented. This fragmentation is illustrated by the 1999 general election.<sup>282</sup> The government used the police and judiciary to crack down on Anwar’s threat, and since then has been trying to win the “hearts and minds” of the Malay. It is important for the government to gain their support. This led the government to justify the arrests of Anwar and his associates as related to security. If the government fails to secure and protect Malay hegemony, it would not be surprising to see the government lose its two-thirds parliamentary majority to the opposition (particularly the PAS). Therefore, protecting Malay hegemony is essential for the survival of UMNO and Malay politics. A challenge to Malay hegemony could lead to ethnic disharmony reminiscent of the 1969 race riots.

### **3. Religion**

The most significant social phenomenon in Malaysia during the 1970s and the 1980s was the growing Islamic resurgence.<sup>283</sup> The Islamic resurgence had an impact on Malay society, particularly urban Malay youth. In fact, it also posed a challenge to the internal unity of UMNO.<sup>284</sup> Several UMNO leaders have demanded changes to make the party practices more Islamic. The greater awareness of Islam has influenced Malays’ everyday life. People want more knowledge of Islam. There have been calls for adherence to Islamic principles in

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<sup>281</sup> K.S. Nathan and Geetha Govindasamy, “Malaysia: A Congruence of Interests,” in *Coercion and Governance – The Declining Political Role of the Military in Asia*, ed. Muthiah Alagappa, (Stanford: Stanford University Press, 2001), 259.

<sup>282</sup> “The 11<sup>th</sup> general election was held on 29 November 1999. In this election, the Barisan Alternatif (BA) secured 43.5 percent of the popular vote against BN’s 56.5 percent. However, the BN’s popular vote declined about 9 percent compared to 1995 general election. Although the BN won the election, the BN suffered severe losses. For example, in Kedah, BN lost 8 out of 15 parliamentary seats. In Terengganu, the BN suffered defeat by losing all 8 parliamentary seats and lost 28 of 32 seats in the State Assembly.” See Khoo, 118 – 119.

<sup>283</sup> Simon Barraclough, “Managing the Challenges of Islamic Revival in Malaysia – A Regime Perspective,” *Asian Survey*, Vol. 23, No. 8 (August 1983); 958.

<sup>284</sup> Ibid., 964.

the state's affairs, such as demands that *shariah* law replace British law and that education be made more Islamic.<sup>285</sup> Associations for the purpose of raising Islamic consciousness in the Muslim community have increased in number and to achieve their aims have developed different *modus operandi* and shared perspectives.

**a. Religious Deviationism**

As a result of the Islamic resurgence, some groups came to be regarded as “beyond the pale of orthodoxy and as a source of religiously inspired violence.”<sup>286</sup> Labeled as “deviationist groups,” these groups were perceived by the government as practicing inappropriately or violating Islamic norms in Malaysia. Barraclough points out that a minimum of 40 groups with 30,000 followers (including 17 active groups) were identified as ‘deviant’ in Peninsular Malaysia.<sup>287</sup> This constitutes a security concern for the government. The *Al Arqam* group, for example, was charged with being deviationist because Ashaari, the leader, claimed “to be a messenger of *Imam Mahdi*, who claimed visionary links with the Prophet.” The group treats female members as “sex slaves” and is anti-modernization; it sees non Muslims as enemies and hypocrites.<sup>288</sup> The most serious accusations are that *Al Arqam* has trained 313 “holy warriors” in Thailand to take power in the country<sup>289</sup> and that the group is connected to militant Islamic activists in the Middle East and North Africa Islamic countries.<sup>290</sup> This purported link to other groups caused the government to fear that one day *Al Arqam* followers will turn militant and threaten internal security. Defense Minister Najib Tun Razak claims that

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<sup>285</sup> Barraclough, 959.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid. 960.

<sup>288</sup> See Camroux, 863 and Amnesty International Report, Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy, 22.

<sup>289</sup> Ibid.

<sup>290</sup> Abdullah A. An-Na'im, “The Cultural Mediation of Human Rights: The Al-Arqam Case in Malaysia,” in *The East Asian Challenge for Human Rights*, eds. Joanne R. Bauer and Daniel A. Bell, (Cambridge: Cambridge University Press, 1999), 150.

It is a very dangerous form of teaching, which, if left unchecked, would cause a severe dislocation in Malaysian society. Obviously, they (Al Arqam leaders) have a political agenda, kept secret all this while, to gain political power.<sup>291</sup>

As a result, *Al Arqam* has been banned under the Societies Act. Ashaari and his followers were arrested under the ISA and released after two years in detention.

Similarly, in 1997, dozens of Shia believers were arrested under the ISA.<sup>292</sup> The government claimed that “religious disharmony is a national threat which places the country’s political and economic development at an unsafe position.”<sup>293</sup>

From the government perspective, religious deviationism is a cancer on Muslim society and deviationist activities must be curtailed before they have a chance to spread. Curtailment will also avoid religious sectarian violence like that which occurred in the 1970s and 1980s.<sup>294</sup> Most of the time, the government has used the ISA to counter religious deviationism. The ISA succeeded in keeping deviationist religious practices which might threaten national security from spreading throughout the Muslim society.

#### ***b. Religious Extremism***

Extremist groups started as religious deviationists. Over time, deviationist groups have sometimes developed into religious extremists. The government has perceived religious extremists as a serious threat to internal security, especially to public order and racial harmony. For instance, in 1978 five Malay fundamentalists attempted to desecrate Indian temple statues in Kerling,

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<sup>291</sup> Dato’ Seri Najib Tun Razak, cited from An – Na’im, 161.

<sup>292</sup> Amnesty International Report, Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy, 23.

<sup>293</sup> Ibid.

<sup>294</sup> “In September 1985, the police attempted to arrest Ibrahim Libya, a local Islamic teacher and ex-PAS candidate, ended up in a bloody confrontation with the police forces. In this incident, 18 people including Ibrahim were killed, 29 were injured and 160 were arrested. Ibrahim and his supporters were suspected of being involved in several criminal activities, ‘socially divisive activities’ and ‘extremist activities.’” See Khoo, 227 – 228.

Selangor; four of the five were beaten to death.<sup>295</sup> Not only did this incident raise the specter of racial violence; it also demonstrated “the influence of religious extremism among Malay youth.”<sup>296</sup>

In 1980, another violent incident occurred in Batu Pahat, Johore when twenty men in white robes, armed with swords, attacked a police station.<sup>297</sup> A number of police and civilians were severely injured and eight attackers were killed. The leader of the group was a Cambodian Muslim convert. According to Barraclough, the group had planned a *jihad* to capture Peninsular Malaysia and then march to the USSR.<sup>298</sup>

Obviously, these incidents raised communal tensions in Malaysia and resulted in religion clashes. Thus they threatened internal security. Religious clashes elsewhere, like between the Muslims and Christians in Moluccas of Indonesia, and between the Hindus and Muslims in India, provide good examples of how such conflicts can undermine internal security. Hence, the connections between religious deviationism and extremism cannot be denied. One might argue that the former does not necessarily become the latter, but in many instances, deviationists turn into extremists.

Using preventive legislation, the government has successfully ended the communist insurrection and threats posed by religious deviationists and extremists. The government has not hesitated to use its power against those who tried to encroach on domestic security. As Prime Minister Abdullah Badawi points out,

We . . . have zero tolerance for ethnic and religious extremism that threatens the peace and the welfare of our citizens. We consider ethnic and religious excesses particularly dangerous, for they have a tendency to evoke powerful passions that are difficult to rein in once they take hold. The political, economic and social damage

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<sup>295</sup> Barraclough, “Managing the Challenges of Islamic Revival in Malaysia – A Regime Perspective,” 960.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid., 961.

<sup>298</sup> Ibid.

they cause can be prohibitive, and linger long after the event. We therefore have in place tough laws, and some of them are preventive in nature.<sup>299</sup>

The government is serious about ensuring the security of the people, a seriousness demonstrated by its efforts in combating terrorism in the 1990s and especially since 2001.

In combating terrorism, the government has taken pre-emptive actions against “domestic terrorists” such as members of Al-Ma’unah and Jemaah Islamiah (JI), as well as the ambiguous (and perhaps nonexistent) Kumpulan Mujahidin Malaysia (KMM).<sup>300</sup> The government used the ISA as a counter measure before these groups could do any harm. To date, the government has managed to prevent terrorists from creating havoc.

Since the PAS challenged the UMNO, the government (dominated by the UMNO) has perceived the PAS as a source of internal security threats. Hence, the government has put PAS activities under government surveillance. In addition to heavy surveillance, tight regulation has also been imposed on the party’s operations, including their newspaper (*Harakah*), which may be circulated

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<sup>299</sup> Dato' Seri Abdullah Haji Ahmad Badawi, "The Challenges of Multi-Religious, Multi-Ethnic and Multi-Cultural Societies," Asia Media Summit on 19 April 2004 at Hotel Nikko, Kuala Lumpur. Available at [http://www.pmo.gov.my/WebNotesApp/PMMain.nsf/hv\\_PMKiniSemasaNew/E3CF78F7CDABD6F748256E7B002BBD3D](http://www.pmo.gov.my/WebNotesApp/PMMain.nsf/hv_PMKiniSemasaNew/E3CF78F7CDABD6F748256E7B002BBD3D); accessed 9 March 2006.

<sup>300</sup> It is doubtful whether the KMM actually exists. The alleged members of KMM denied the existence of the group. In fact, during interrogation, the interrogator did not even ask about this group. For example, Zainol Ismail, while giving testimony to the National Human Rights Commission, claimed, “I was accused (of) being the founder of the KMM, but all this is just a creation of the police. There is no such thing as the KMM.” The existence of KMM remains questionable because of the government’s inconsistent claims about KMM. The government’s name for this group keeps changing. At the beginning, the name was “Kumpulan Militant Malaysia” which then changed to “Kumpulan Mujahidin Malaysia.” Subsequently, the government reverted to claiming the group’s name was “Kumpulan Militant Mujahidin Malaysia,” before finalizing it as “Kumpulan Mujahidin Malaysia.” No group structure or leadership of this organization has been independently verified. Further, from discussion with Malaysian police officers (whose identity must be protected), it seems that KMM was a creature created by the government to instill fear among the population and to gain support, since support from the people—especially from the Malay—had declined during the Anwar crisis. See also David Wright-Neville, “Dangerous Dynamic: Activists, Militants and Terrorists in South East Asia,” *Pacific Review*, Vol. 17, No. 1, (March 2004), 43, Human Rights Watch Report, “In the Name of Security: Counterterrorism and Human Rights Abuses under Malaysia’s Internal Security Act,” Vol. 16, No. 7 (c), (May 2004), 15 – 16, and Nicole Fritz and Martin Flaperty, “Unjust Order: Malaysia’s Internal Security Act,” Special Report (May 2003) Available at <http://law.fordham.edu/cr-pix/cr-Malayrep.pdf>; accessed 21 June 2005.

only to party members. Its editor and publisher have been charged under the Sedition Act defamation law or the Printing, Presses and Publication Act (PPPA).<sup>301</sup> Some party members and leaders have been arrested periodically under the ISA. The government has also tried to tarnish the PAS image by portrayed its members as extremist, deviationists, radicals, fanatics or even terrorists.<sup>302</sup> After September 11, 2001, the government linked PAS to Al-Qaeda and JI, and arrested a few PAS members. This tactic has allowed UMNO to gain popular support against PAS, as revealed in the 2004 general election.

## **B. THE ADVERSE EFFECT OF RESTRICTING OF HUMAN RIGHTS ON INTERNAL SECURITY**

Restrictions on human rights have met strong protests from a number of groups: the opposition parties (DAP, PAS, PRM and Keadilan), local and international human rights groups (Suaram, Hakam, Human Rights Watch and Amnesty International), and NGOs such as Aliran, Women's Aid Organization and Gerak. The question then arises whether internal security will be affected if the Malaysian government does not improve human rights conditions. If the answer is affirmative, then what are the effects on internal security? Is there a relationship between human rights and internal security?

This was Malaysia's dilemma: "to choose between unconditional respect for human rights and the need to safeguard a seriously threatened public order."<sup>303</sup> Arguably, the effects are double-edged. Any adverse effects on internal security from government restrictions on human rights are unclear. To date, no serious incident affecting internal security has occurred in Malaysia; however, the potential for such incidents must be considered.

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<sup>301</sup> Zulkifli Sulong, editor of the opposition newspaper Harakah, and Chia Lim Thye, who holds the permit for Harakah's printing company, were charged under the Sedition Act in January 2000 for an article relating to the Anwar sodomy trial allegedly written by Chandra Muzaffar, deputy president of the National Justice Party (Parti Keadilan Nasional). The article alleged that there was a government conspiracy against Anwar. Contempt charges brought against Muzaffar had been previously dismissed. See Human Rights Watch – Malaysia: Repressive Laws Section. Available at <http://www.hrw.org/campaigns/malaysia/2000/laws-sedition.htm#zulkifli>; accessed 12 February 2006.

<sup>302</sup> Joseph Liow, "Deconstructing Political Islam in Malaysia: UMNO's Response to PAS Religion-Political Dialectic," *IDSS Working Paper*, No. 45, (March 2003); 8.

<sup>303</sup> Mariano Grandona, "Reconciling Internal Security and Human Rights," *International Security*, Vol. 3, No. 1, (Summer 1978), 8.

The first of the hypothetical effects of human rights on internal security is its impact on internal stability. Internal security has been the government's primary concern, as it believes that the nation's stability should be preserved at all cost, even the undermining of citizens' rights.

Continual suppression of people's rights has the potential to cause internal instability. Some people might go underground to operate as an alternative. Normally, underground movements were deemed to be subversive groups that might resort violence to achieve their objectives. For example, when the CPM was banned, it launched a secret campaign, penetrating Chinese schools and trade unions to spread its ideology. In struggling to uphold its ideology, the CPM succeeded; it recruited cadre from Chinese school leavers, persuaded trade unions to launch strikes against the government, and carried out terror activities like the assassination of the Inspector General of Police in 1974 and the National Monument bombing in 1975. Al Maunnah's group is another example of an underground movement. Initially, this group was registered as a martial arts association; its militant activities were secret until it raided an army camp.

A second effect of human rights is on Malaysia's domestic economy. Malaysia's economy has been very dependent on exports and foreign investment. Thus, the Malaysian economy has to compete with globalization, deal with strong foreign direct investment by China, and overcome the barriers to its "rapid transformation into a knowledge-driven economy."<sup>304</sup> To sustain itself in the world economy, Malaysia needs to transform its economy. Malaysia perceived its economic viability and competitiveness as security problems due to the real threat during the financial crisis in 1997. But by restricting human rights, the government discourages the population from being innovative or critical of government economic policies such as the New Economic Policy. After twenty years (1970 – 1990), NEP could not achieve its aim of ethnic equality, due to "the weak official commitment to address the problems of poor Chinese in the new

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<sup>304</sup> Mohamed Jawhar Hassan, "Enhancing U.S. – Malaysia Cooperation on Transnational Security Threats," Database on-line, Available at <http://www.ndu.edu/inss/symposic/pacific2005/jawhar.pdf>; accessed 13 March 2006.

villages and the predominantly Indian workers in the plantation sector.”<sup>305</sup> This may have the potential to exacerbate ethnic conflicts among the Malay, the Chinese and the Indians, furthering internal insecurity.

Third, without improvements in the human rights situation, the gate is left open for police brutality and abuse of power. Although the police have the power to detain any person arbitrarily for 60 days, they should not abuse the human rights safeguards in the Criminal Procedure Code and Lockup Rules. The police should protect human rights and follow the rule of law. Also, corruption has been epidemic in the police forces. Table 10 illustrates how the level of corruption in the police force has increased over time. One should bear in mind that Table 10 includes reported cases of corruption, but including unreported cases, the actual number may be higher.<sup>306</sup> Corrupt and brutal police make the police forces ineffective, and this encourages people to commit crimes. Furthermore, people are deterred from reporting wrongful acts by police personnel. If the court finds that the report of corruption or wrongdoing is incorrect, the person who reported it can be charged under relevant law. If the police forces are inefficient, internal security is affected.

Table 9. Information on Corruption Received in PDRM and Actions Taken by Anti-Corruption Agency (ACA), Malaysia 2000-2004 (From: Report of The Royal Commission to Enhance the Operation and Management of The Royal Malaysian Police and Anti-Corruption Agency’s Report, Various Issues. (2004). *Report of The Royal Commission to Enhance the Operation of The Royal Malaysian Police*, Kuala Lumpur).

No.	Subject	2000 PDRM	2001 PDRM	2002 PDRM	2003 PDRM	2004 PDRM
1.	Information received	1203 (11%)	1180 (13%)	1143 (14%)	1194 (12%)	1337 (12%)
2.	IP’s opened	93 (13%)	122 (18%)	162 (15%)	167 (16%)	167 (17%)
3.	IR opened	225 (10%)	242 (13%)	365 (15%)	318 (12%)	294 (12%)

<sup>305</sup> Gomez and Jomo, Malaysia’s Political Economy – Politics, Patronage and Profits, 39.

<sup>306</sup> Corruptions in the police forces are undeniable. Based on the statistics, one can safely suggest that at all levels of police forces are corrupted. There are also “clean hand” policemen in the forces, but their numbers are too small. Based on the author’s experience and knowledge, the most corrupted policemen are the traffic police, and most of the cases involving them are unreported.

No.	Subject	2000 PDRM	2001 PDRM	2002 PDRM	2003 PDRM	2004 PDRM
4.	Arrest	82 (19%)	101 (31%)	83 (28%)	87 (25%)	126 (25%)
5.	Charged	24 (15%)	38 (33%)	45 (20%)	36 (36%)	31 (17%)
6.	ACAR	24	56	54	42	47 (32%)
	<b>Total</b>	<b>1651</b>	<b>1739</b>	<b>1852</b>	<b>1844</b>	<b>2002</b>

**Note:** IP: Investigation Paper  
IR: Intelligence Report  
ACAR: Anti-Corruption Agency's Report  
PDRM: Royal Malaysia Police Number in brackets reflects the percentage of cases received on PDRM out of the total information received on corruption in Malaysia.

Fourth, the judiciary has been deprived its independence since 1998.<sup>307</sup> The courts have been reluctant to deal with human rights cases. The court's power of judicial review was abolished by Mahathir. It can be safely said that since 1998, the judiciary has been undermined by the executive. Moreover, the Attorney General has practiced selective prosecution, as seen in the case against the Chief Minister of Malacca for statutory rape. Surprisingly, the wrongdoer was released and the person who reported the crime was sentenced to imprisonment.<sup>308</sup> Selective prosecution and discriminatory justice may cause popular dissatisfaction and opposition, along with public insecurity.

Fifth, if the human rights situation is not improved, all possible checks and balances will have been invalidated. No branch of the government should be allowed to operate without checks. The principle of separation of powers has been gradually eroded by the executive. Instead of "rule of law," the executive has controlled the country through "rule by law." With the notion of having a strong state, the government believed that the executive should be stronger than the other branches. It is necessary to adhere to the doctrine of separation of powers or an independent judiciary.<sup>309</sup> As Arshad points out,

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<sup>307</sup> Kua Kia Soong, 5.

<sup>308</sup> For further detail, see also Amnesty International Report (1999), 37 - 38, The Observatory Report, 10 and Khoo, 112.

<sup>309</sup> Charles Hector, "Malaysia: Mahathir and the Judges," Aliran Monthly. Issue. 8. (2003). Database on-line. Available at <http://www.aliran.com/monthly/2003a/8g.html>; accessed 13 February 2006.

Parliament's powers, prerogative and administration functions must not be handed over to the executive. To allow such a move would be akin to allowing the erosion of the doctrine of separation of power (or what's left of it).<sup>310</sup>

By ruling through "rule by law," the internal situation can become unstable and result in havoc.

Sixth, civil and political rights are the basic premise of democracy. In fact, these rights have been greatly suppressed by the Malaysian government. When these rights are suppressed, the democratic process is eroded.

In Malaysia, the substance of democracy has been more important than its form. Mahathir pointed out the incapability of the strong Western countries to handle simple problems. In his view, they were led by weak leaders because "these countries practice a distorted form of democracy; a democracy that stresses form rather than substance. Democracy has become an article of faith wherein its worship is far more important than the practical results obtained from it."<sup>311</sup> To him, the ignorance of democracy's substance would weaken the legitimacy of constitutional institutions. He also asserted that "the western type of democracy will not help the Asian nations and that a 'controlled democracy' is most suited for a nation like Malaysia."<sup>312</sup>

To Mahathir, as long as Malaysia conducted periodic elections and the opposition parties still existed, freedom of expression, association and speech were not important. He stated as much in 1993, before the Council on Foreign Relations.

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<sup>310</sup> Amer Hamzah Arshad, "Separation of Power under Threats – Don't Create a Dangerous Precedent by Creating a New Post or Department for Parliament," *Aliran Monthly*, Vol. 25, Issue 9 (2005). Database on-line. Available at <http://www.aliran.com/monthly/2005b/9c.html>; accessed 14 March 2006.

<sup>311</sup> Mahathir Mohamad, "Leadership in the Post-Cold War Era: The Challenge of Change," The Council on Foreign Relations, New York, 39 September 1993. Database on-line. Available at <http://www.pmo.gov.my/WebNotesApp/PastPM.nsf/acfe72124fba2e148256e72001d223e/e6ee9385ae4747924825674a001982c6?OpenDocument>; accessed 18 March 2006.

<sup>312</sup> C. S. Kuppuswamy, "Dr. Mahathir Mohamad: In Power for Two Decades-An Assessment", Paper No. 34, South Asia Analysis Group, (28 August 2001). Database on-line. Available at <http://www.saag.org/papers4/paper304.html>; accessed 18 March 2006.

Majority rule, minority rights, freedom from oppression, freedom from hunger, freedom of association, freedom of the press and the right to free speech, transparency, the rule of law and a host of other ideas and thoughts linked directly or obliquely with democracy--all these need to be examined.<sup>313</sup>

In reality, the people should be given rights to participate in the decision making process that determines their lives.<sup>314</sup> "Participation in elections would be void of meaning, unless there is freedom of expression and association sufficient to create a space for a real political competition."<sup>315</sup> In an undemocratic nation, there will always be antagonisms. The cleavages between races or political parties make the nation less secure.

The government's recent trend has been to label dissidents as "extremists" in order to discredit them. This has been done to cause confusion between the concepts of "extremist" and "terrorist."<sup>316</sup> Literally, "extremist" means radical, or departing from the norm, while "terrorist" means a systematic use of terror or coercion.<sup>317</sup> The government argues that one is usually an "extremist" before turning into a "terrorist". Further, "terrorists" used coercion and often violence to achieve their objectives. Additionally, their targets will be government agencies which may involve innocent people and the public at large. Hence, when a group has been labeled "terrorist," it is a very serious accusation which involves the idea that the group is willing to resort to violence.

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<sup>313</sup> Mahathir, "Leadership in the Post-Cold War Era: The Challenge of Change."

<sup>314</sup> Dewi Fortuna Anwar, "Human Security – An Intractable Problems in Asia," in *Asian Security Order: Instrumental and Normative Features*, ed. Muthiah Alagappa, (Stanford: Stanford University Press, 2003), 545.

<sup>315</sup> Dimitrina Petrova, "Strengthening the Rule of Law in Building Democratic Societies: Human Rights in the Administration of Justice," *Seminar on the Interdependence Between Democracy and Human Rights*, Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002. Available at <http://www.unhcr.ch/democracy/D-Petrova.pdf>; accessed 14 March 2006.

<sup>316</sup> Rashid Kang, Michele Keegan, and Sanjay Gathia, "Human Rights Defender in Asia Region 2002," Database on-line. Available at [http://www.csdspolsi.chula.ac.th/publications/Challenges\\_eng/03%20HS%20Defender%20in%20Asian.pdf](http://www.csdspolsi.chula.ac.th/publications/Challenges_eng/03%20HS%20Defender%20in%20Asian.pdf); accessed 21 January 2006.

<sup>317</sup> Merriam-Webster's Collegiate Dictionary, 11<sup>th</sup> Edition (Massachusetts: Merriam-Webster Incorporated, 2003).

The government has accused dissidents of being extremists by bombarding the people with rhetoric through the government controlled media. In the long term, this propaganda may affect civil society because the public may fail to differentiate between “extremists” and true “terrorists.” The government has created an environment for “rational debate on certain issues and fueled the fire with racism.”<sup>318</sup> The first step was the government’s labeling the dissidents as “anti-government.” The second step, when dissidents started to debate the issue publicly, was the government labeling them as “extremist.” In the third step, the ruling party leaders criticized the dissidents and described them with words such as “chauvinistic,” “unpatriotic,” “dangerous,” and “seditious.” Finally, the state-controlled media has portrayed the group as “extremist” and called on the government to invoke repressive laws such as the ISA or Sedition Act.<sup>319</sup> This systematic repression was carried out in 2001 against the Dong Jiao Zong, a Chinese education group which opposed changing from the use of the Chinese to the English language in science and mathematics in Chinese primary schools.<sup>320</sup>

The PAS faced the same problem when the government labeled it as “extremist” and subsequently linked it with terrorist organizations. In fact, several PAS members were targeted and detained under the ISA by the government as “terrorists,” including the Kelantan Chief Minister’s son. Using this tactic and exploiting public fears, the government succeeded in gaining support from the public. Also, the public was perceived as giving the government consent to act against terrorists.<sup>321</sup>

Malaysia is fortunate because to date, the adversarial effects discussed above have not been manifested by the people. There are several reasons. People are not willing to lose what they have (property, money and good employment, for example). They are not willing sacrifice by moving out of their

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<sup>318</sup> Kang and et al., 24.

<sup>319</sup> Ibid., 25 – 26.

<sup>320</sup> Ibid.

<sup>321</sup> Wu Min Aun, 11 – 12.

“comfort zone” and they do not want to live in conflict. People are too tired to fight for civil and political rights. And they are complacent, accepting the existing situation in Malaysia. This trend, it is believed, may continue for another decade.

### **C. THE POTENTIAL CONTRIBUTION OF IMPROVING HUMAN RIGHTS TO INTERNAL SECURITY**

Just as restrictions on human rights has the potential to damage internal security, improving human rights can conceivably strengthen it. First, if human rights are improved, subversive activities may decrease. At the very least, people will have alternative way to air their views on controversial issues. And, too, there can be more open discussions with the NGOs and the government. At the same time, people’s loyalty to the state may increase. They are likely to appreciate their rights and desire to protect their government from threats. They may perceive that changing to an alternate form of government could result in more restrictions on their rights. Hence, if it were to become necessary, the people might be more willing to sacrifice and defend their country in order to preserve their rights.<sup>322</sup>

Second, by improving the human rights situation, the government’s transparency, accountability and effectiveness levels will be improved. The rule of law will always check human rights violations by the other government branches and maintain the stability of the country. If Malaysia is stable, it will more easily attract foreign investors to the country, simultaneously improving the nation’s economy. This investment would help the government to decrease the unemployment rate and subsequently decrease poverty. At the same time, the government would be able to put its efforts into development, so that people will have their basic needs met and productivity can increase.<sup>323</sup>

Third, the improvement of human rights might enhance the capability of the police forces. Police activities could be checked by an independent commission to ensure that the rule of law is respected. This might also curtail criminal activities, and thus increase the level of internal security. People may be

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<sup>322</sup> Christie and Roy, 26.

<sup>323</sup> Ibid.

more willing to report police violations of human rights or police brutality. When a state is secure, the population can live in peace and harmony. Thus, there will be no civil war in the country, which could reduce arms trafficking, political and civil refugees, and uncontrolled degradation of the environment.<sup>324</sup>

Fourth, the improvement of human rights would allow the free flow of information, which would facilitate innovation, efficiency and entrepreneurship among the population. The people would be free to invoke their creativity and also to think critically for the betterment of all. This might assist Malaysia in achieving its 2020 vision. Malaysia might become a model for other countries on how to reconcile human rights and internal security in a pluralistic nation. The improvement of human rights would encourage healthy dialogue between civil society and the government on human rights issues. In this respect, SUHAKAM could play a role as mediator, bringing together the government and civil society and opening the opportunity to develop a stronger civil society.

Fifth, judicial control and the democratic process should be balanced and serve as checks for one another. “The harmonious balance between the rule of law and democratic process remains a valid normative ideal . . . and it is routinely repeated in constitutions enacted in the last decades.” <sup>325</sup> As Petrova points out, “The rule of law in a democratic society is a prerequisite and main vehicle for the protection of human rights.”<sup>326</sup>

#### **D. THE BALANCE BETWEEN INTERNAL SECURITY AND HUMAN RIGHTS**

At the present stage, internal security is the main concern of the Malaysian government. To insure internal security, the government has adopted a repressive attitude towards the population. It has exercised this attitude through special laws designed to strengthen internal security and protect society from the threat of subversive activities. These special laws impose restrictions and abridge certain freedoms to hinder potential threats. In so doing, however,

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<sup>324</sup> Christie and Roy, 26.

<sup>325</sup> Petrova, 4.

<sup>326</sup> Ibid.

the government has violated human rights and curbed the civil liberties of certain groups. This situation itself poses a security dilemma: How far can civil and political rights be abridged by the government for the sake of protecting the state's internal security?

Civil and political rights were provided under Part II of the federal Constitution, as previously mentioned. Part II provides the pillars of the civil and political rights to which Malaysians are entitled. However, these rights are not absolute. Restrictions have been imposed on each right in the form of legislation (see Table 7). This might mean that the population consented to the restrictions on civil and political rights through their representatives in the Parliament. Although the restrictions were initiated by the government, the House of Representatives and Senate should exercise scrutiny prior to endorsing the laws. Because the government controlled a two-thirds majority in both houses, the process of endorsement was shortened; there were no setbacks. In short, the government is the sole decision maker on grants of civil and political liberties to its population.

Civil and political rights in Malaysian political history have been eroding since the 1960s. The September 11, 2001 incident served as a catalyst to the further deterioration of human rights in Malaysia. It is not necessary for Malaysia to enact new counterterrorism laws. However, since the September 11 incident, the GWOT has provided the government with an excuse to crack down on political opponents and religious groups. The government, particularly under Mahathir, used the anti-terrorism campaign to harass and punish individuals and groups perceived as critical of the government and therefore as political threats to the regime. Human Rights Watch reported in 2004 that "the Internal Security Act was used by the government to imprison pro democracy activists, students, alleged extremists, and supporters of Anwar."<sup>327</sup>

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<sup>327</sup> Human Right Watch, "Opportunism in the Face of Tragedy: Repression in the Name of Anti-terrorism," Database on-line. Available at <http://hrw.org/campaigns/september11/opportunismwatch.htm> and "In the Name of Security: Counterterrorism and Human Rights Abuses under the Internal Security Act," Vol. 16, No. 7 (c), (May 2004). Available at <http://hrw.org/reports/2004/malaysia0504>; accessed 6 June 2005.

The use of the ISA to reduce terrorist threats has raised concerns among human rights advocates. They worry because this legislation “has measures [that] abridge the human rights and curtail civil liberties of suspected persons who are actually innocent of any wrongdoing.”<sup>328</sup> Detention without trial violates human rights and might be dangerous to the future of democratic society.<sup>329</sup> Besides detention without trial, the ISA also promotes the culture of fear and the oppressive impact of the actual detention.<sup>330</sup> Moreover, this law prevents the suspect from getting judicial review by the courts. The ISA has been used continually since 1960. To rationalize the supposedly short term curbing of civil and political liberties, the impression was given that repressive laws are necessary to preserve internal security for the long term. The government emphasized that total free exercise of civil liberties might undermine national security. Thus, lessening those rights would make the population safer.<sup>331</sup> When the government can convict people on grounds of national security, its tendency to abuse power increases. As Joyner rightly comments, the government should not abridge guaranteed fundamental liberties without close and careful scrutiny. It is safe to suggest that Malaysia does not need to enact new laws to combat terrorism because the existing laws are sufficient to protect national security against any threats.

It is important to balance the rights of individuals and the security of the state, especially after September 11 attack. Without a balance, those who are arrested will not receive fair trials. It also seems prudent for Malaysians to undertake a periodic review of existing laws and evaluate their efficacy, so that laws that infringe fundamental liberties might be repealed or amended.

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<sup>328</sup> Christopher C. Joyner, “The United Nations and Terrorism: Rethinking Legal Tensions between National Security, Human Rights and Civil Liberties,” *International Studies Perspectives*, 5, (2004), 244.

<sup>329</sup> Ibid., 252.

<sup>330</sup> Netto, 89.

<sup>331</sup> Joyner, 252.

## **E. CONCLUSION**

Since its inception, Malaysia has focused on combating domestic threats; internal security has been the government's main concern. When the communist insurgency ended in 1989, Malaysia faced different forms of internal threats. Most came from the religious extremists and deviationists. The government managed to solve those problems. Since then, threats to internal security have come from various sources: terrorism, racial tensions, the Malay hegemony, and the Islamic challenges from PAS. In dealing with these threats, the government has used the ISA to arrest people perceived as prejudicial to national security. Although the arrests violated human rights, the government believed the actions necessary to prevent future problems.

The relationship between human rights and internal security is ambivalent. It is difficult to explain the situation in Malaysia. On the one hand, human rights have been suppressed and violated; on the other hand, the situation has been stable, the people living in peace and harmony. It might be said that in the case of Malaysia, there is no significant relationship between human rights and internal security. The adversarial effects discussed in Section B of this chapter are hypothetical effects. It was assumed that if the human rights condition is not improved, the consequences might include the following: continued abuse of power by public officials, erosion of the principle of separation of power, ethnic tensions, domestic instability, political instability and labeling dissidents as "extremists." Since 1969 race riot, there has been no major incident of internal instability. Although Anwar's crisis boosted the human rights struggle, the government managed to destabilize the movement. In addition, the GWOT has contributed to the collapse of the struggle for human rights in Malaysia.

However, if the government improves human rights, subversive activities could be controlled. Improvements in human rights would increase the loyalty of citizens, improve police capability and reduce crime, and improve the nation's governance. Thus, improvements in human rights will make Malaysia an example to other developing countries, and increase the government's transparency and effectiveness.

Furthermore, human rights help guarantee internal stability. When a nation is stable, foreigners will not hesitate to invest there, which will improve the national economy and give the population new business opportunities. Foreign investment and greater employment improve and strengthen a nation's economy, allowing it to better participate in the world economy. When the economy is strong, the people will live in peace and harmony. The improvement of human rights always benefits a nation.

## VI. SUMMARY

It is not easy for a people conditioned by the iron rule of the principle that might is right to free themselves from the enervating miasma of fear. Yet even under the most crushing state machinery courage rises up again and again, for fear is not the natural state of civilized man.<sup>332</sup>

Aung San Suu Kyi

This thesis has looked at the integration of Malays, the Chinese, and Indians into the plural society of Malaysia. Pluralism in Malaysia has always been a source of ethnic tensions and political instabilities, as evidenced in the First Emergency and the 1969 race riot. The government's reaction to the race riot significantly changed the political landscape from consociationalism to semi-democracy. As a semi-democratic nation, Malaysia has conducted regular elections while at the same time restricting civil and political liberties.

The condition of human rights in Malaysia from 1957 to 2005 has been examined. The thesis demonstrates that the human rights situation has evolved over time. In general, at the early stage of independence, there was liberal rule concerning human rights, although there were also abuses of power by the government. During the term of the first Prime Minister, Tunku Abdul Rahman, human rights were not a major concern, as political leaders focused on nation-building and economic development. For a newly independent nation, these factors were crucial for stability and security. In this period, the government used legal means to counter internal threats, including those from the communists and radical Malay leftists.

As indicated in Chapter II, the 1969 race riot was the turning point for human rights practice and the Malaysia political landscape. This thesis illustrated the consequences of the riot, in which the government under the second prime minister, Abdul Razak, restricted some human rights, especially civil and political

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<sup>332</sup> Aung San Suu Kyi cited in Suaram, *Malaysian Human Rights Report 2002: Civil and Political Rights*, (Kuala Lumpur, 2003). Database on-line. Available at <http://www.suaram.net/HR-report-2002.pdf>; accessed 15 June 2005.

rights. For instance, freedom of speech, freedom of expression and freedom of assembly were restrained by the Sedition Act. Under the pretext of maintaining national unity, Razak continued to arrest political dissidents whom he perceived as presenting a challenge to the regime or a serious threat to public order. Despite continual use of the Internal Security Act, other laws, such as the Industrial Relations Act and Trade Union Act and Universities and Colleges Act, were amended to regulate and limit workers' and the students' political activity. It is safe to say that during Razak's term, civil and political rights shrunk and were tightened more than in Tunku's period. The situation remained unchanged, even when Hussein Onn held office as Malaysia's the third prime minister.

The thesis describes how civil and political rights were weakened under Mahathir's premiership. During his term, Mahathir centralized all the power in the hands of the executive.<sup>333</sup> He did not respect the principle of separation of powers<sup>334</sup> and did not even believe in democracy.<sup>335</sup> Not only did he limit civil and political rights; he also eliminated the independence of the judiciary and the mass media. He used the courts to make decisions favorable to the government. The mass media was controlled by ownership or by the Printing Press Publication Act. During Mahathir's rule, the ISA and other repressive laws were used arbitrarily to serve his own interest. Legislation was used to silence criticism of himself or his party by political enemies, political dissidents, nongovernmental organization activists and journalists. Beginning in 2000, the number of ISA detainees increased. Mahathir also used racial harmony, "Asian values," developmentalism and terrorism as justifications to legitimize his actions against opponents. He perceived those who opposed government action as anti-government or as "Western tools" or even traitors who might threaten national security. The onset of the Global War on Terrorism gave Mahathir an excuse to further extend restrictions on civil and political rights. Mahathir's continued

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<sup>333</sup> Netto, 91.

<sup>334</sup> Hector, 7.

<sup>335</sup> Tate, 5.

restraint of civil and political rights was driven by his desire to make the executive stronger and to defend his position as a prime minister.

This thesis also shows that after Mahathir's rule, the Malaysian civil and political rights situation did not change. So far, promises to improve civil and political rights by the fifth prime minister, Abdullah Badawi, have not been translated into actions—they are merely empty promises.<sup>336</sup> The government's slow reaction to the Malaysia National Human Rights Commission's (Suhakam) recommendations further aggravated the human rights situation. The government's failure to react to the Suhakam's recommendations demonstrated its unwillingness to improve human rights. Moreover, Suhakam was deemed to be a government tool to silence criticism from domestic organizations and the international community. In addition to silencing the critics, Suhakam was also seen as enhancing the government's image in the eyes of the world. Given these perceptions, it is safe to characterize Suhakam as a "toothless" organization.

Civil and political rights in Malaysia have been severely curtailed since the 1970s. Before then, the government felt it had to justify any action to restrict the civil and political rights of particular groups. For example, in the 1960s, the anti-communism rationale was used by the government to counter communist insurgents, sympathizers, and those directly involved with communist activities. Surprisingly, during that period, few political opposition party leaders were arrested under the ISA and accused of communist activity.

After the communist threat ended, the government used racial harmony to justify the continual use of repressive legislation against its own people. Indeed, after the race riot in 1969, racial harmony and national unity became the government's main focus. Whoever tried to promote ethnic tensions was arrested under the ISA or under other repressive laws, such as the Sedition Act or the PPPA. And again, the government targeted opposition party leaders and members and NGO activists.

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<sup>336</sup> Hector, "Empty Human Rights Promises," 2.

Later, the notion of “Asian values” was used to legitimize Mahathir’s actions to limit civil and political rights. Mahathir stressed that “Asian values,” which emphasizes family and diverse cultures, were suitable for Malaysian society. He thought that economic and development issues should prevail over the concept of individual rights that had been promoted by the Westerners. At the same time, Mahathir used his authoritarian style to continually suppress civil and political rights. One might correctly say that the rationales of “Asian values” and Developmentalism were used to authorize an authoritarianism regime and to legitimize government actions against the population.

After the September 11, 2001 attacks in the United States, the threat of terrorism became a new rationale to further limit the Malaysian population’s civil and political rights. By portraying and linking Parti Islam SeMalaysia to terrorist organizations, the government succeeded in gaining support, especially from Malays. Further, the government launched pre-emptive arrests against suspected terrorists and whoever was linked to or supported terrorist groups (including political dissidents) and as a result paralyzed terrorist activities in Malaysia.

The relationship between human rights and internal security in Malaysia is ambiguous. Improving or not improving the human rights situation has not affected internal security. Ethnic tensions undeniably still exist, but at a very low intensity. Incidents described in Chapters III and IV show that the government managed to contain these tensions by using legal mechanisms, like the ISA and the Sedition Act. The Anwar Ibrahim crisis boosted the human rights struggle in Malaysia but the GWOT changed everything. The government manipulated the terrorism issue, and terrorism has given the government a strong justification to continue suppressing the rights of the people. In the name of national security, many people seem willing to sacrifice their rights. And if this is so, it is safe to suggest that the government is unlikely to face powerful incentives to improve the country’s human rights.

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